
HARVARD LAW SCHOOL ASSOCIATION

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James Barr Ames

HARVARD LAW SCHOOL ASSOCIATION

REPORT

OF THE

EIGHTEENTH ANNUAL MEETING

AT CAMBRIDGE, JUNE 28, 1904

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PRESENTATION OF PORTRAITS

AT THE

LAW SCHOOL

J. B. Thayer.

PRESENTATION OF PORTRAITS

JAMES BYRNE, ESQ.

Mr. Chairman, Mr. Gray, Graduates and Students of the Law School : On behalf of men who have studied under him, I present to the Law School this portrait of Professor Thayer (drawing aside the covering from the portrait of Professor Thayer which hung on the wall).

It is a fitting honor to one who has served the School, that from her walls his pictured countenance should look down on the scenes of his work; and to those for whom the work has been done it is pleasing to think that through this portrait their gratitude and affection may help to keep alive in the traditions of the School the memory of an eminent jurist, a great teacher, and a man of singular personal charm.

I welcome the opportunity to speak of the debt that his pupils owe him, and to pay tribute for them to his many noble qualities; but I can only say once again what every one who has spoken or written about him since his death has said, and what hundreds of times while he was alive men have said to me and I have said to them. For we all thought the same about Professor Thayer, — it was not possible to misunderstand him ; he was not profound in his work to-day and superficial to-morrow; he was not kind to this man and cold to that; years did not change him; and so those who knew him as I did a quarter of a century ago, in the

intimate way that a scholar of this School knew the teachers, and afterwards saw him only at rare intervals, and those who will be graduated to-morrow and were under him during his last months, and those who were his colleagues during the long term of his service here, all of us at all times saw the same qualities of mind and heart as clear and distinct as to-day we see his face in this portrait. To the lips of all of us when we speak of him the same words arise, — depth of research and learning, infinite pains and patience, accuracy, sincerity, high ideals, perfect courtesy, and kindness of heart.

He taught us methods of study; to get out of a case, as one of his colleagues has said, "Everything that was in it, and nothing that was not in it." He gave us also a body of principles and facts, the result of his own application of his own methods, which we rightly accepted as truths that did not need reëxamination. I do not think that any earnest man ever left the lecture-room of Professor Thayer without carrying with him in his notes some sentence around which, then and years after, crystallized knowledge that without it would have been formless and useless.

His portrait will recall not only the lawyer and author and man, but a great era in the history of the Law School. At the close of his life, as he looked over his career in the Law School, the retrospect must have been a pleasant one. About him were three of the men who had been his colleagues for nearly a generation ; they together from the beginning had done work as teachers in this School not surpassed by any work done by any body of men that I have ever met. About him, too, were newer colleagues, bound to him

also by ties of esteem and affection. The administration of the University and of the Law School that he joined as a young man was still in power. New systems of study that he had seen introduced into the College and the Law School amid doubt and distrust had been gradually adopted by the leading colleges and schools of the country. He had seen the Law School keep pace with the College in its marvellous expansion in reputation and in numbers. Twenty-five years ago, in the class-room, he had said to us one day that the best gift a lawyer could make to his profession was a book upon which had been spent all the time and labor and thought needed to make it as good a book as the author could possibly write. He had lived to write such a book. For himself, his colleagues, his College, and his University, all things had gone well ; he had seen their reputation and influence increase from year to year, and success had come from nothing weak or mean, but from pure purposes and high aims.

Professor Thayer was at work in the Law School until the day before his death. The noble soul, Dante says, is like a good mariner, for when he draws near the port he lowers his sail and enters softly and with gentle steerage. More fortunate, it seems to me, the mariner who sails in such quiet waters and with such favoring breezes that he can keep his sails unfurled until the anchor is ready to be dropped.

HENRY W. HARDON, ESQ.

Mr. Chairman: If I may be indulged for a few moments, I should like to add a foot-note to the address

which Mr. Byrne has just made, an address to which it is clear that we all respond earnestly.

Some fifteen years ago, Professor Thayer performed a piece of work by no means unimportant, for which, so far as I know, he has not yet received public credit; and this would seem to be the proper occasion on which to mention it.

In 1889, the Territory of Dakota was about to be admitted to the Union as two States. Mr. Henry Villard was at that time Chairman of the Finance Committee of the Northern Pacific Railway, the most important corporation operating in that Territory. He was sincerely desirous that the two new States should start right, that they should have the best constitution which could be framed for them, and with that purpose in mind he consulted Mr. Charles C. Beaman, then one of the leaders of the New York Bar. Mr. Beaman advised him that if he could get Professor Thayer to draft a constitution for the new States, they would have the benefit of all that expert knowledge and sound judgment could accomplish in that respect. Professor Thayer undertook the task. His draft-constitution was submitted to the two conventions, and was in large part adopted by them. The legislative article in the Constitution of North Dakota, for example, is substantially word for word the language of Professor Thayer's draft.

It rarely happens to a teacher or to a lawyer to accomplish a piece of constructive work of this kind, a piece of work affecting so widely the interests of so large a community, affecting them not merely for the present but for the future.

You may think it singular that the authorship of a

work of this importance should wait until this time for public disclosure. The fact is, that it seemed prudent when the work was doing to conceal its authorship. Though Mr. Villard was moved only by a single-hearted desire to promote the welfare of the two new States, it was feared that a draft-constitution prepared by an Eastern college professor, under the direction of a Wall Street lawyer and at the instance of the head of the largest corporation in the Territory, might fail of adoption if its authorship were known; that the people whom it was designed to benefit might entertain a suspicion that a constitution so prepared, however fair upon its face, concealed some sinister attack upon their property rights. The two constitutions have now been in force some fifteen years. Their merits have been proved in that time. But two amendments have been made to the North Dakota Constitution, and one of these incorporates a clause from Professor Thayer's draft omitted by the constitutional convention. The principal actors in this scheme to help the people of the Dakotas are now all dead, and I am the only survivor of the two young men who were engaged in the preliminary work under Professor Thayer's direction. The occasion for concealment of the origin of these constitutions has now passed, and the facts I have narrated should not be lost for lack of a record.

Professor Thayer's case-books, as we all know, we who have studied them, are among the best. His "Preliminary Treatise on Evidence" has given him fame wherever the common law is known and studied. The draft-constitution which he made is an epitome of the learning on that subject. But I still feel, as

Mr. Byrne has said, that the great influence that Professor Thayer has exercised is the influence of the teacher in this School, that in the class-room he so combined his fine qualities both of mind and heart that we may justly say of him in the words of Schiller: —

> "Wer den Besten seiner Zeit genug gethan
> Der hat gelebt fuer alle Zeiten."

JAMES F. CURTIS, ESQ.

Mr. Chairman and Graduates of the Harvard Law School: A little over a year ago some members of the graduating class of the Harvard Law School thought that it would be a gratifying and fitting tribute to the labors and the character of Dean Ames if they had a portrait of him painted and hung in the Library. They communicated their plan to their Class and then to the other classes. It was received with tremendous enthusiasm. A committee was immediately formed to collect the necessary funds, and to have the portrait painted and the scheme put through. It is for that committee that I speak.

We set to work secretly, very secretly, for we all felt that had Dean Ames any idea that such a plan was on foot, he would have suppressed it at once. Our feeling was well justified, for even after we had got the plan thoroughly put into commission, as it were, the Dean did his best to get out of it. He tried hard to squelch us, and modestly but resolutely refused to have anything to do with us. However, we persuaded his colleagues that it was a proper thing to do, and he submitted to their judgment.

That, Gentlemen, is the history of how this portrait

came to be painted. Why we wanted it, I need not tell this audience. You all know how he has given his life for over thirty years to the sole interests of this School; you all know how he has succeeded; you all know his character and lovable personality. But those of you who graduated before 1895 cannot know how we younger graduates value our knowledge of him not only as Professor, but in that more intimate capacity of Dean and personal adviser.

Gentlemen, on behalf of last year's undergraduate body I take pleasure in presenting to the Corporation of Harvard, to be hung in its School of Law, this portrait of its present Dean (uncovering the portrait). I trust it may hang somewhere near the portrait of his immediate predecessor. Nothing, I think, could be more fitting. The one revolutionized the theory of teaching law, and established a magnificent system; the other has nobly carried forward that work, and has built up an institution admittedly without a peer in the English-speaking world. A keen and forceful thinker and writer, a sympathetic and inspiring teacher and friend, and above all, an ideal Harvard gentleman — James Barr Ames.

PROFESSOR JOHN C. GRAY.

Mr. Chairman and Brethren of the Association: It has fallen to me to accept these portraits on behalf of the Faculty and of the Corporation. They are accepted with gratitude, and are added with much satisfaction to the goodly company of portraitures of those whom the University in its various departments delights to honor.

We all owe much to the University; to some, as to the subjects of these pictures, it has been given to pay that debt a hundred-fold.

Of the Dean, the fact that he is still with us precludes us from speaking out our minds and hearts. Criticism has often to be silent over the dead, so eulogy must often be silent in the presence of the living. We must not jar upon his taste or offend his modesty. If I were speaking to strangers, I should, notwithstanding, be tempted to say what is in my mind ; but to you — you will speak that eulogy in your own hearts.

Yet I may, without offence, say what he stands for to the School ; he stands, *me judice*, as the philosopher in the law, — I do not say as the scholar in the law, for that has a smack of dilettanteism, and nothing is more abhorrent to his nature than dilettanteism, — but as the philosopher in the law. It is the intellectual and moral sides of the common law that appeal to him; he pities Socrates and Plato, that they had it not to talk over in the groves of the Academy; he deems it a fit theme for the high discourse of the cherubim. We all of us are fond of the common law, but perhaps with a greater or less dash of skepticism; to him, common law and equity are twins altogether lovely,

> "Not harsh and crabbed as dull fools suppose,
> But musical as is Apollo's lute."

He believes in them, he loves them, and faith and love are great powers, they have been great powers with him. Yet there is a rival in his thoughts and affections, there is something that he cares for even more than for the doctrine of unjust enrichment or the

specialty character of negotiable paper, and that is the Harvard Law School. May he long live to care for it, and to bless it with his benign rule.

In speaking of Professor Thayer, who, alas, is no longer here, there is no obstacle to giving expression to our full feeling, and to saying that no one in the line of teachers in the School has ever deserved and won more honor and more affection than he.

This is not the place for an elaborate statement of Professor Thayer's work as a teacher and writer, but I may be pardoned if I try to say in a word what seems to me its most striking characteristic. Mr. Thayer's mind moved slowly, but when he knew a subject, he knew it thoroughly; he knew it as one knows his friends or his children, in a very live and real way, and in its broad relations, and he imparted this sense of life and reality to his hearers and readers.

Many of you could give personal experiences of what you have gained from him. One I have had, of a very special character, and that must be my excuse for mentioning it. Before Mr. Thayer came to the School, I gave, in one or two years, as an outside lecturer, a course on Evidence. I fear that will seem to many of you as if I were making myself out a prehistoric man, but it is the fact. Sir James Stephen's "Indian Evidence Act" had then just come out. I studied it with enthusiasm, and made it the basis of my lectures. When, on Mr. Thayer's death, I again took up the subject of Evidence, I knew, in a general way, that Mr. Thayer was not a follower of Stephen and, as an ardent Stephenite, I was quite prepared to disagree with Mr. Thayer's views. I was, in short, in a critical frame of mind. But I found my-

self coming to Thayer's conclusions, one by one ; he conquered me. (I may say that I think the difference between Mr. Thayer and Judge Stephen was mainly one of words, and on that question Mr. Thayer was in the right.)

But Mr. Thayer was not only a wise and learned lawyer, he was the most lovable of men.

There is an old saying, "Manners maketh man;" and I have often thought that Mr. Thayer had the best manners of any man I have ever known. There was in him a simple dignity, a genuine cordiality, a thinking of others, a lack of self-consciousness, which made him the most delightful of friends. He would have been at his ease if sitting at table between the Pope of Rome and the Czar of all the Russias, and he was equally at his ease in talking with the shyest of young men, without condescension and without strained familiarity.

He was the best type of a New Englander, without the creaking of the joints that sometimes marks and mars that estimable personage. It has been said that the difference between a good Bostonian and a good Philadelphian is that the Bostonian thinks everything wrong that is not right, and the Philadelphian thinks everything right that is not wrong. In this matter, Mr. Thayer was of the Philadelphian school. A large, tolerant, kindly nature, too busy in his work for others to worry himself with the pettinesses and miseries of introspection.

Not to have been influenced for good by the example of such a man would show a strange incapacity to discern what is noble in human nature. In honoring his memory, we honor ourselves.

ORATION IN SANDERS THEATRE

ORATION IN SANDERS THEATRE

BY

HON. WILLIAM H. TAFT, LL. D.,

Secretary of War

THE UNITED STATES IN THE PHILIPPINES.

At twelve o'clock noon, Chief Justice Fuller called the meeting to order and said: —

Coming to us after signal success at the bar and on the bench, crowned with the honors of a thoughtful, wise, and humane government of a distant people, the Association extends a hearty welcome and an appreciative acknowledgment to the distinguished son of a sister University, whom it is my pleasant duty to present as the Orator to-day, the Hon. William H. Taft, Secretary of War. (Applause.)

Mr. Chief Justice and Gentlemen of the Harvard Law School Association: It is an honor which I greatly appreciate, to be asked to address your Association. You are the alumni of the greatest law school in the world. It may be that there are law schools having a larger list of students, but there is no school within my knowledge, in which the study of the law has evoked from students properly prepared by academic education the enthusiasm which we find in yours. The study of the profession of

medicine has generally awakened in the graduates of academic institutions — even in those who have displayed no particular interest in their collegiate studies — greater enthusiasm and greater application than that of any other profession. But this advantage in favor of the study of medicine is not maintained when comparison is made with the study of law at Harvard. The case system of study which was introduced under the guidance of Professor Langdell, and which has been improved and developed under Dean Ames and his able associates, aroused an interest and a spirit of investigation and a search for truth in the study of the Anglo-Saxon law not known before. I speak with some confidence on this subject because I was associated in an humble way with the reorganization of a law school in which the Harvard method was followed, and because in the experience of a decade upon the bench I was able, in the many graduates of the Harvard Law School before me as advocates, to trace the excellence of the preparation which they had received for their life-work under the guidance of Langdell and Thayer and Gray and Smith and Ames and all of their associates. Under the auspices of the Harvard Law School, the modern tendency of an academic education to produce the *nil admirari* and pessimistic spirit which dwarfs all energy and paralyzes the disposition to be useful in the world finds no encouragement, and the enthusiasm aroused, while it does not permit blind servility to unreasonable precedent or authority, stimulates interest in the practical problems of life, strengthens the motive for doing things, and nerves those who diligently pursue the study to constant practical effort for success. The system of study

thus inaugurated and continued for now nearly thirty-five years has had a profound influence upon the legal educational methods of the country, upon its mode of judicial investigation and decision, and so upon its jurisprudence.

Invited to address the alumni of an institution of legal learning like this, I hope that I do not bring to their attention a subject lacking in interest if I attempt, during the time which is allotted to me, to speak of the United States in the Philippines. I have thought that this subject might present some interesting questions of mixed law and politics. The study of the law on its public side necessarily involves questions which are for the politician or statesman, and no matter how anxious a lawyer may be to avoid politics or participation in it, he finds that his training and his methods of thought inevitably lead him into a constant weighing of the reasons for or against state policies, and that a thorough preparation in the law is perhaps the best foundation for sound political views or a successful political career.

When news that the protocol had been signed and hostilities had ceased between Spain and the United States reached the Philippines in August, 1898, Dewey's fleet controlled the bay and Merritt's soldiers were in possession of the city of Manila, which was the key of the islands. The question of what should be done with the Philippines was left by the terms of the protocol an open one, to be determined in the final treaty of peace between the two nations. In December, 1898, the treaty of peace was signed. By one of its terms and in consideration of $20,000,000, the sovereignty and ownership of the Philippine Islands

were transferred by Spain to the United States. On April 11, 1899, it was ratified by exactly a two-thirds vote of the Senate.

In the light of the facts as we know them now, could any other course have been taken by the United States? Could we have given the islands back to Spain? With our consent and indeed at our instance and with arms furnished by us, Aguinaldo had raised an army which assisted us in investing Manila and in its capture, and which, during the suspension of hostilities, had gone on driving the Spaniards out of their interior posts. We were, in a sense, allies of Aguinaldo and his followers, united for the purpose of driving Spain out of the Philippines: they, to avoid further oppression by Spain, we, to cripple our enemy by taking what he had. It was our destruction of the fleet in Manila Bay that broke the power and prestige of Spain in the islands, and on this Aguinaldo builded in his subsequent conquests of other points in the Archipelago; but for more than five months our action was joint. To desert him as an ally, to restore to Spain Manila, which was the key of the islands, and thus to enable Spain to drive him back into the interior and finally disperse his forces, would have been violating an obligation which the circumstances of our joint action created, and would doubtless have subjected the islands to another and a bloody war. It is true that we might have secured immunity for Aguinaldo and his followers from Spain, and stipulations as to a better future government; but in their fight against Spanish maladministration, they had carried on one revolution without securing reforms; and promises of Spain to that end seemed "writ in water."

Second, could we have taken the islands from Spain and then have turned them over to Aguinaldo and his government? Were we under obligation to do so? Aguinaldo claimed that Dewey agreed on behalf of the United States that we would acquiesce in the independence of the islands, and that Pratt, consul at Singapore, and Wildman, consul at Hongkong, did the same thing. Neither Admiral Dewey, nor Pratt, nor Wildman had any authority to make such an agreement. More than this, Admiral Dewey, Consul Pratt, and Consul Wildman denied that any such statement or promises had been made, and now, in the third place, a document has come to light, signed by Mabini as Aguinaldo's secretary of state, containing secret instructions to two envoys in respect to negotiations with General Otis, in which occurs the statement that the United States and Aguinaldo had made no agreement, but had merely united with a common purpose to drive Spain out of the islands. Aguinaldo knew that it was for the government at Washington to decide what was to be done with the islands. He was so advised by General Anderson, and although General Anderson expressed doubt as to America's holding the islands contrary to a former policy of having no colonies, he made no promise or guaranty and left the matter to higher authority. A fair review of the evidence shows that Aguinaldo was not misled, and that the refusal of the United States to turn over the islands was not the act of perfidy and treachery which certain of our fellow citizens at one time seemed delighted to call it. This view is corroborated by the signed proceedings of the Junta at Hongkong, to which Aguinaldo was a party, in which the policy was agreed

to, that Aguinaldo should go with Dewey, should persuade him to furnish him arms with which to drive out the Spaniards, and then, if the Americans did not leave and surrender the islands, that the arms obtained from the Americans should be used to drive them out of the islands too. This does not show Aguinaldo to have been led on by promises of independence into a course which he would not have taken but for the promises. It shows that he anticipated the reluctance and refusal of the Americans to abandon the islands to him, and foresaw as possible the conflict which ensued.

But it may be asked, how can there be implied an obligation to our allies to withhold the islands from Spain without extending the implication so as to require us to give up the islands to the Filipinos? Where, in other words, is the ground for the line of distinction, if in fact it was known to the Americans, as it seems to have been, that Aguinaldo wished independence? The purpose of the joint action was to drive Spain out of the islands. Neither party was justified in treating with Spain separately so that Spain should remain in the islands to the prejudice of the other; but with Spain driven out and the joint object of the alliance accomplished, the disposition of the islands afterwards was a matter for subsequent settlement. Now I agree that the traditions of American policy justified one in anticipating that the United States, if she could do so with honor, would decline to govern the islands as a dependency, and she doubtless would have done so, had it been a possible solution. But if the fact was, that she could not abandon the islands to her ally without subjecting the islands to a much worse fate than by turning them over to Spain, the

fact that Aguinaldo counted on her policy in the past of avoiding the government of such dependencies imposed no duty on her to satisfy his expectation. Could she have safely turned the islands over to Aguinaldo? They have a population of 7,000,000 Christian Filipinos, 300,000 Moros living in South Mindanao and the islands of the Sulu Sea, and 300,000 of the wild tribes. The Christian Filipinos are divided into six or eight civilized tribes speaking different languages. For 333 years they have been under the tutelage of the Spanish friars, and they have become devotedly attached to the Catholic Church. Comparatively few of them are educated. Not more than 7 per cent. speak Spanish, and the good speaking of Spanish is there a test of education. From ninety to ninety-three per cent. are ignorant and uneducated.

The 600,000 of the Moros and wild tribes in the islands, the friars were always unable to convert. These included the Moros, who are Mohammedans, the Igorrotes, who live in the mountains of northern Luzon, the Negritos, who are the aborigines of the islands and the lowest form of humanity in them, found in the mountains of nearly all the islands, and the Bagobos and other mountain tribes of Mindanao that seem to have an Indonesian origin. I cannot too strongly emphasize the fact that these wild tribes, including even the Moros, do not represent one tenth of the population, and should not discourage us in the development of the Christian Filipinos as a people toward a higher level of civilization. The presence of the Moros and the wild tribes in the islands, however, in such considerable numbers, materially varies the problem to be solved, increases the difficulties of the

present government, and constitutes one of the serious objections to turning the islands over to the Christian Filipinos in the near future, because it requires that the latter should not only be capable of self-government, but also capable of governing with kindness and wisdom other peoples who are of savage and semi-barbarous types. The 90 per cent. of the Christian Filipinos who do not speak Spanish are really Christians. They are capable of education, and they have no caste or arbitrary customs which prevent their development along the lines of Christian civilization. They are merely in a state of Christian pupilage. They are imitative. They are glad to be educated, glad to study some language other than their own, and glad to follow European and American ideals. They differ utterly in these respects from the East Indians, from the Malays of Java, and the Malays of the Straits Settlements, and thus make our problem different from and vastly easier than that of England and Holland. They have aspirations for self-government; they have aspirations for independence; and they have at times laid down their lives in defence of what they believe to be the interest of their race and their nation. They are not a boisterous or turbulent people. If not aroused, they are gentle and kindly. Like all Orientals, they are a suspicious people, but when their confidence is won, they follow with a trust that is complete. In warfare, when their angry passions have full vent, they are cruel, and they execute orders of a supposed superior to commit homicide with a stoicism and indifference that we of the Western World can hardly understand. Ignorant as they are, they are very easily moved by men of their own race who speak their language

and have an influence among them by reason of wealth or education. It is the great weakness of this people that first one leader and then another may command their support, and that factions may be created and anarchy brought about by the conflicting ambitions of the unscrupulous educated politicians among them. The educated are divided into those who are wealthy and conservative, and those who are young, ambitious, violent, and willing to resort to extremes. Among the conservative type, one finds men of culture, honor, honesty, and most reasonable views on every subject; but such conservative members of society are generally timid before the violent declarations of the educated "fire-eater," whose words of enthusiasm and excitement can easily bring to his aid all the taos and men of lowly class who come within his influence. In other words, the people of the islands are such that in their present state, without the restraining command of a beneficent foreign power, the islands would be in a constant state of agitation to gratify the ambition now of one leader and then of another; anarchy would be certain to ensue, and society would be almost in a state of dissolution. To be sure, there might be the solution of the absolute despot, of strength and ability enough to command the whole Archipelago, but certainly the man has not shown himself yet in Filipino society.

For some eight months Aguinaldo maintained a government in ten or more of the provinces. It was simply that of the military dictator. Under the guise of the election of local officials, subject to the consent of the central authority, he appointed all the officers of all the provinces and of all the municipalities. Under the guise of a representative constitutional

assembly which should frame the constitution, he appointed all but an insignificant number of the members of that body, received from their hands the constitution which has awakened such admiration in some parts of America, and then consigned the instrument to use for foreign and diplomatic purposes only. It never was put in force, its guaranties were never enjoyed by the people, and, so far as a practical foundation for government was concerned, it was but waste paper. The result of the government was oppression, arbitrary action, and disturbance greater than ever occurred in the times of Spain. I do not mean to do injustice to Aguinaldo. I know him. He has been at my house a number of times, and I have been at his. I have talked with him on such subjects as he was willing to discuss. I offered to appoint him on the commission to visit this country, but he declined. Since his release, he has been living quietly in Manila, and has conducted himself with dignity and propriety. He is a native of the town of Cavite Viejo in the Province of Cavite, a primary school-teacher under the Spanish régime, engaged in teaching Tagalog. He was poorly educated, and speaks Spanish haltingly. He displayed great bravery in the revolution of 1896, at the head of volunteers in attacking a Spanish force sent to subdue him. He was the first Filipino leader who won a victory for the insurgents, and this made him a hero and surrounded his name with a halo. He continued resistance to Spanish authority until, in what was called the treaty of Biacna-bato, he and his immediate followers agreed to withdraw from the islands for $400,000 and to expatriate themselves, on the condition, as they asserted, though it

did not appear in the written memorandum, that Spain would institute reforms in the government of the islands. The money was paid and Aguinaldo withdrew, but before he sailed for Europe, whither he was going, our war with Spain began and he was induced to return to the islands to take part. Dewey gave him the necessary arms, and he soon set the insurrection of 1898 on foot. Aguinaldo had elements of leadership in that he summoned about him, when authority grew in his hands, the able and the educated of his people to aid him. He did not profess knowledge, and he saved himself from the envy of his colleagues and co-agitators by confessing his defects of learning, and leaning on better-educated men. His closest adviser and friend was Apolinario Mabini, educated as a lawyer, of considerable reading in political matters, a fluent writer and speaker, and one whose hopeless condition as a paralytic appealed to his people. Mabini was credited with being the brains of Aguinaldo, and certainly he exercised a powerful influence over his course. The Katipunan Society, which was a secret political organization, embracing at one time in its history quite a number of leading Filipinos and a great majority of the lower classes, was organized for political purposes to bring about independence, and there seems to be no doubt that it was sometimes used as an instrument of assassination by those who had control of it. The founder of it was Andres Bonifacio, who, becoming jealous of Aguinaldo's power, himself revolted, was tried by court-martial, was pardoned by Aguinaldo, and subsequently was killed in the mountains of Cavite, probably by Aguinaldo's order. Antonio Luna, who was far and away the ablest military leader of the

insurgents, was entrapped into a visit to Aguinaldo's headquarters and a quarrel with the guard, who shot him. The persons in this country who have idealized Aguinaldo have indignantly repelled the charges that Aguinaldo compassed these two deaths, but one must say that the moral evidence is very strong against him. He admitted to General Funston that he had caused Luna's death, because, he said, Luna was engaged in a conspiracy against him. Mabini, his closest friend, and the man who was most familiar with all that he did and his whole policy, charges him, in a book written within a few months of Mabini's death, with having caused the assassination of both Bonifacio and Luna. Mabini's book is written in a judicial style, and betrays no evidence of bitterness of feeling against Aguinaldo which would prompt him to a false statement of the facts. Aguinaldo has not seen fit publicly to deny either accusation.

A perusal of the so-called "diary" of Aguinaldo, which is really a diary of his physician, written while he was in hiding in Luzon from the American troops, reveals no statesmanlike views of government, no anticipation of a betterment of the people, but only the childish hope of a maintenance of the pomp of the ruler and the enjoyment of the luxury which the wealth of the state would afford him, and the pleasure of distributing largesse from the coffers of the state to his immediate friends. I do not wish to traduce Aguinaldo, or to show that he is a murderer, in our sense, because I do not so regard him. What he did he doubtless thought to be justified by political exigency and self-defence. But I deem it important to bring out the facts in order to show the character of

government that he was establishing, that its corner-stone was violence and bloodshed; and that under such a government there was no hope of civil liberty.

To sum up, then, it is clear that the corruption and abuses of Aguinaldo's government and the certainty of anarchy that would follow, due to the peculiar conditions I have just described, would have made it an act of folly on the part of the American people, strongly to be condemned, to abandon the islands. It is worthy of note that when Aguinaldo signified his intention of resisting the Americans, the most conservative of his supporters left him. Indeed, his Congress at Malolos at one time unanimously passed a vote that they would accept the sovereignty of America, but this was defeated by Luna and the army, probably with the secret aid of Aguinaldo. In other words, it was the violent, the ambitious, those thirsting for military glory, that defeated the purpose of the wiser and more conservative leaders of opinions.

If, then, the government could not be turned over to Aguinaldo and his followers, the only other course was that America should accept the sovereignty over the islands, and conduct a government there for the benefit of the Filipino people. The Supreme Court of the United States has held that the transfer of the sovereignty by the Treaty of Paris from Spain to the United States was a legal transfer, and that the United States was the lawful sovereign in the Archipelago after the Treaty of Peace was signed. Its authority was resisted, and now the question arose, what was its duty. I conceive that its duty was exactly that of any government in which a very considerable part of the people, subject to its control, desire to withdraw from

its sovereignty, and set up a government of their own. What are the principles which should govern the consideration of such a demand? It is said that the Declaration of Independence, in the phrase that all just rights of government must depend upon the consent of the governed, requires that we should take steps immediately to allow those who would withdraw to govern themselves as they would. I do not think that the instrument can bear such a construction. The language used must always have the implied qualification or limitation that those who are governed and whose consent is necessary to their just government must be persons capable of so governing themselves that the tendency of their government will make for the benefit of the whole people whom they seek to withdraw, and not for the demoralization of the people, and disorder and anarchy. It is to be observed that under the government of any people, a part of the people, in some cases the majority, in other cases a minority, must govern the remainder, with or without the consent of that remainder. In other words, if we interpret the words literally, the consent of the governed as the basis for a just government is a wholly theoretical ideal, because it postulates an impossible unanimity on the part of all the people. For practical purposes, then, in popular government the rights of the government will depend on the consent of the majority, and the majority therefore becomes responsible for the government of the minority. When, then, the question is presented to a free government like ours, whether any considerable part of the community ought to be allowed to separate itself, or whether any people which by the law of nations comes under our control ought to be permitted

to govern itself by the majority, the country, by a formula taken from the Declaration of Independence, cannot rid itself of the responsibility to the helpless minority of looking into the character of the majority which is to carry on the proposed new government, and its capacity for securing to the minority justice and protection. This responsibility becomes all the greater when instead of being asked to turn over the government to a majority of those to be governed, it is in fact asked to turn the government over to a small minority made up of a cabal of violent military men maintaining their power by an army and terrorism and assassination. It has been suggested that we must treat the Filipino people as a whole, and that whatever manifests itself as government among them, we must respect, whether it is that of the dictator or the majority, and must assume that that government which is, has the consent of the governed. But this is a fiction and should not be made the basis for action. Then it is said that any government, however bad, evolved from the people governed, is and must be better than a government of them guided and maintained by another people. The difficulty about this statement is that it is untrue. There are many cases where one people is better governed by another and an alien people than by itself. Look at Egypt under England, or Algiers under France, for example.

Again, there are too many precedents in our own history of our governing peoples without their consent under justifiable circumstances to yield to the claim that the assumption of the sovereignty over the Philippines is an unprecedented departure from our country's fundamental traditions. We took Louisiana

from Napoleon, and for a number of years we exercised a government over the people of that country against their will and protest by means of a commission. Since 1867 we have exercised the same kind of a government over the territory of Alaska. Since the treaty of Guadalupe-Hidalgo in 1848 we have exercised complete control over New Mexico and Arizona without consulting the inhabitants, although we promised to make them States. In the War of the Rebellion we coerced eleven States, which had declared in the most emphatic way their desire to govern themselves, and brought them back into the Union to be governed by a union government. Even if their fathers had consented, by coming under the Constitution, to such a government, they were not themselves bound by their fathers' consent, unless the principle of the consent of the governed be amplified so as to make it apply not only to the governed but to all their descendants. As applied even at the time it was signed, the Declaration had to have, in order to be consistently read, many parentheses and qualifications. Many of those who signed it were slaveholders. All came from States where property qualifications were necessary for those who exercised political control. The exercise of political control involves a responsibility that needs some education and experience to meet it, and the principle of the Declaration of Independence cannot apply except to those people who have such a sense of responsibility.

Political science is not an exact science, and political principles and maxims are not to be construed and interpreted as one interprets a mathematical proposition. The general ground for popular self-govern-

ment is that political experience has shown that the best government of a fairly intelligent people is a popular government, a representative government, in which every one who is affected by the law, and every class which is affected by the law, shall have an opportunity to be heard before the question of the law shall be settled. In other words, it is certain that, in the long run, no one is as likely to look after one's interest as well as the person whose interest is involved; but this too is subject to the qualification that the person whose interest is involved shall have sense enough and intelligence enough to know what his interest is, and shall not be in a state of wardship or pupilage.

Now it will be said that the instances where in the past we have governed other people were cases of temporary government over territories that were likely to come into the United States, and while the application of the principle might be suspended for fifty or one hundred years, still the prospect of its application was sufficient to reconcile the conscience of the country ; but that in the case in hand we went into a country to which we had no relation, and took possession by force of arms without consulting the people. I have attempted to show the dilemma in which we found ourselves by fortune or fate of war. Not by our seeking, not by any greed of territory, but by circumstances over which we could exercise no control, we were forced into a relation with the Filipino people which imposed obligations on us we could not escape. Certainly the circumstances were exceptional enough to justify and require us to depart from our traditional course of non-intervention in foreign affairs and to do justice. It therefore became the

duty of the United States to put down resistance to its authority in the establishment of a government for the Philippine Islands, and to give to the people of those islands as good a government as it could. Believing, as the United States did, in popular government, and that it was the best form which government could take, it was the duty of the United States to prepare the people for popular government.

Well, what have we done? First, we have suppressed the insurrection. It was a long, hard struggle, for which the army as a whole deserves the highest credit. As the resisting power of the insurgents grew less in 1900, President McKinley conceived that the war might be brought to an end if with the rigor of a military campaign be mingled as an object lesson the peaceful methods of organizing civil government, and so he sent a civil commission, which, following in the wake of the army wherever it deemed conditions favorable, organized municipal and provincial governments on bases so liberal in the matter of autonomy as to surprise the inhabitants of the islands. The municipal code gave complete autonomy to the people; that is, to those eligible to vote, who constitute hardly fifteen per cent. of the total population. The organization of governments began after the second election of McKinley. Then, too, was formed the Federal Party, a party the main plank of which was peace under the sovereignty of the United States, and the second plank of which expressed hope that as the people developed in the course of self-government, the Archipelago might be received first as a Territory and then as a State. The leading members of the Federal Party had been Americanistas, and always sympathized with

America in its desire to establish just and well-ordered government there. They now were able to unite with them in every town in the islands a great majority of the respectable people, the educated, wealthy people, who, overcoming their fear of assassination and intimidation by the guerrillas, came together in such force as to protect themselves, and joined in making up municipal and provincial governments under the American sovereignty which are the foundation of the present general government in the islands. The provincial government was not entirely autonomous: it was left to the people to elect the governor; the other provincial officers were appointed. Certain of them were selected under the civil service law. In the central government the commission of five Americans was increased by three Filipinos, and a civil governor was subsequently appointed, who was a member of the commission but did not have the veto power. That power resided in the Secretary of War. All this was done under President McKinley as commander-in-chief, and created a quasi-military government until, by an act passed in July, 1902, the government which had been formed was confirmed by congressional action, and its powers considerably enlarged and extended. By that act, a popular assembly will be elected in 1906, and will form one branch of the law-making power of the islands.

The next thing which was done was the suppression of ladronism. In order to do this, it became necessary to create a force of native constabulary in each province under American officers. Numbering 6500, with the assistance of 3500 Philippine scouts, the constabulary in two years after the close of the insurrection

has reduced ladronism to less of a nuisance than it ever has been in the history of the islands. The constabulary has had its defects and its abuses, but on the whole it has done remarkable work in policing so many islands occupied by so many millions of people. The army has been called on only in three or four instances. The task of suppressing the ladrones has been done almost wholly by Filipinos.

The next thing which was done was to establish an educational system, and a thousand American teachers were imported and sent over the islands to teach the children, and to exercise the beneficent influence that teachers as almoners of that which is most valuable from the government are able to exercise among people who hold education in high esteem. I observe that my friend, Mr. Colquhoun, who has visited the Philippine Islands twice, — at one time when we were organizing government, and ten days at another time after the government had been organized a year or more, — has severely criticised our importation of American teachers. The truth is that Mr. Colquhoun derives his experience from Burmah, where he was governor of a district. The English do not cultivate the teaching of English to the native races, and they do not place education as high up in the scale of important duties of the government as we do here, or as we do in the Philippines. He thinks it would have been greatly better to have imported a few American teachers, to have them taught Spanish, and then to let them teach in the schools. He thinks it would have been better to have made haste slowly. With deference to his opinion, I venture to say that, had the responsibilities of government fallen on him, he would have taken a very

different view. In the first place, his criticism that the American teachers did not know Spanish and were not able to communicate with the pupils has nothing in it, because 95 per cent. of the pupils of the public schools do not know Spanish. What advantage it would have been to a teacher to know Spanish when the pupils only knew Tagalog, Visayan, Ilocano, or some other native dialect, it is quite difficult to see. Secondly, he assumes that English teachers could not teach native pupils English without knowing the language of the pupils. This is altogether an erroneous theory, because experience shows that English teachers who do not know the dialect of the pupils are rather more successful in imparting knowledge of English to the natives than those who are able to communicate with them in their own tongue. More than this, Mr. Colquhoun utterly ignores the tremendous influence for good which was wielded in our favor by American teachers spread all over the islands. Even the ladrones sometimes welcomed the teachers. When they unfortunately captured a teacher going over the mountains, and found what his profession was, they sent him back to his district and his home in a hammock. This is a well-known incident in the Province of Tayabas.

There has been considerable criticism of the educational system in the Philippines, and I do not say that the system is perfect, but I do say we are accomplishing very substantial results. We are teaching the people English, and the people desire to learn English. Certain persons who have not been in the islands, or who were there so short a time as to learn but little, are quite contemptuous of the attempt on the part of the government to teach English. There is no justi-

fication for their sneers or contempt. We are now teaching only about ten per cent. of the youth of the islands of school age, but we are preparing a very large number of Filipino teachers in English at normal schools. We send one hundred Filipino students a year to study in America. From these sources we expect to fill the ranks of the Filipino teachers with English-speaking Filipinos, so that in less than a decade we shall be able to offer to every Filipino child who will study, the means of learning English and of getting an elementary education, and of studying in training schools when they are adapted to learn the trades. The eagerness with which English is studied by the Filipino finds its cause in the badge of equality which the opportunity offered constitutes. Under the Spanish régime, the study of Spanish by the masses was not favored. I fear that the contempt felt for our efforts to educate the Filipinos finds its reason in a desire to get rid of the islands. I agree that such a system of education as that which we are preparing is probably inconsistent with a short stay of the United States in the islands. We cannot teach Filipinos English in a year. We can hardly teach them English in a generation. We can only teach them English thoroughly through the children, but we must wait until the children grow up and become men before the adults shall speak English. Now it is absolutely essential to the preparation of the people of the Philippine Islands for any kind of permanent self-government in which there shall be the safety brake of a popular intelligent public opinion, that the ninety per cent. of ignorant people in the islands should be given a chance to receive an elementary education, and it is upon this fact that I

found the judgment that if we are in the islands and expect to discharge our duty to the people of the islands and prepare them for self-government, we cannot hope to do so short of a generation or longer.

Next in order, we have attempted to construct public improvements in the islands. Indeed, it comes first in order, for the first act which was passed was the appropriation of one million dollars from the treasury for the construction of roads, under the control of the military government. This money was expended as economically as possible by the military governor, and I doubt not has done considerable good in the country. But the effect of the torrential rains upon the macadamized roads in the tropics is so destructive that it requires nearly as much to keep a road in repair as it does for its original construction, and the dreadful agricultural depression, due to the death of nearly all the cattle from rinderpest, and the consequent failure of local taxes due to this depression, have caused local authorities necessarily to neglect the repairs. The commission has expended two millions, and has contracted to spend two millions more, in the construction of port works at Manila, and about half a million at Cebu and Iloilo. Mr. Colquhoun complains that the money for Cebu and Iloilo has been appropriated, but has not yet been expended. This is true. We have advertised for bids, but when I left the islands we had not succeeded in inducing anybody to undertake the work. Since leaving the islands, I understand a contractor has taken the work at Cebu. It must be understood, even by an active, enterprising Englishman, that in a country like the Philippines, where there are not many contractors, there is very

little capital, and the former unsettled conditions do not attract many contractors from abroad. It is difficult to secure the doing of work, even if you have the money and will. Millions are now being spent in the islands on roads, and if we can secure the requisite legislation, I am sure that millions more will be spent in the construction of railroads. The truth is, it is much more economical to construct railroads than it is to construct wagon-roads, and railroads will revolutionize business and society in the islands.

The third thing which we have done is to establish a judiciary system. It was proposed that we have what is called United States court, in which foreigners and Americans could be heard against the natives, and that the other courts should be courts for natives only. We declined to take this view, and created courts in which both native and American judges sit. The supreme court of three Filipino judges and four American judges will compare favorably with any supreme court of the States, and the courts of first instance, numbering now fifteen, in which part of the judges are native and part American, covering the entire Archipelago, are doing their work well, and are bringing to the people an understanding of what the administration of justice should be. I think there is no one part of the government in which we may justly take more pride than in the judiciary, and while its organization has been surrounded with great difficulty because of the necessity of interpreting all court proceedings and evidence from the Spanish language into the English, and from the English into the Spanish, and because of the necessary ignorance of the Filipino judges of American procedure, and the necessary

ignorance of the American judges of the civil substantive law, nevertheless the obstacles seem to have been overcome, and the system works much more smoothly than could reasonably have been expected. We have not disturbed in the slightest the substantive law of the islands, which is embraced in civil codes, the chief of which were the civil, the mortgage, and the commercial codes. We have adopted a civil code of procedure to take the place of the Spanish code of procedure, which was so technical as to enable an acute lawyer to keep his opponent stamping forever in the vestibule of justice. The criminal code of procedure, adopted by general order of General Otis, follows the California code. It is simple and seems to be effective. The criminal code itself of Spain, eliminating political offences and religious offences, is quite well adapted to the people, and no substantial change has been made therein. A few crimes have been added to meet the exigencies of ladronism, and to prevent the press from an abuse of their privileges. But all these provisions were within the constitutional limitations, which by virtue of the instructions of Mr. McKinley to Mr. Root, and their confirmation by the Congress of the United States, extended to the people of the islands all the civil rights included in the Bill of Rights, except the right to bear arms and the right to trial by jury. Now I have been frequently asked in letters from suspicious individuals, resident in and about Boston, whether it is true that all the civil rights are secured to the inhabitants of the Philippine Islands. Indeed, since coming to Boston, I find myself met with what may be called a newspaper "broadside" from an anti-imperialist champion, Mr.

Moorfield Storey. I regret that I did not see what is said in this until late last evening, or I should have attempted a fuller answer than I am now able to give it. One part of the attack is a general charge that facts coming from the islands are suppressed. This is wholly untrue. Under the military government there was, I believe, during the war a regular censorship of all cable messages. After that it was reduced to an examination of cable dispatches after they had been sent by newspaper correspondents. But since the civil authority has been supreme, the dispatches have not only not been censored, but they have not been seen. That is true, certainly for two years and I think longer. And now the charge of suppression is renewed with reference to the so-called Gardner report as to conditions of the conduct of the war in Tayabas, Batangas, and Laguna. A board of officers was convened with a recorder — Colonel Gardner was furnished counsel by the civil government. The Board filed a report which I have never seen because it was filed while I was on my way to the islands, but I understand from Colonel Gardner himself that it resulted in a finding of not proven. He maintained that his report was confidential, that he had not intended it for publication, and that rather than call military officers as witnesses to conversations he had had with them, he would withdraw the charges founded on such statements. I believe that generally his native witnesses failed him from timidity or other cause, though he justified himself by a number of *ex parte* affidavits which he did not use in court, as he could not, but merely kept to show, in case of an attack on him, that he had not acted without warrant. On such a finding, of course, there

was no ground for action by the War Department. The charge that the Superintendent of Instruction warned his teachers not to write letters home for the purpose of suppressing the truth in this country is ludicrously incorrect. It was not to prevent their sending letters here—it was to prevent their return to the islands. The fact was, that in numbers of cases school teachers would write home holding up to ridicule the Filipino people, their civilization, their morality, or their religion. Their letters would be published in this country. If they criticised the religion of the Filipinos, as they sometimes did, the letters would be rightly condemned by the co-religionists of the Filipinos in this country as improper expressions from teachers of Catholic youth, and the removal of the writers would be demanded. The school question is a delicate question with the Catholics at any rate, and as we have many Protestant teachers, we have a right to insist that they shall not destroy their usefulness by publications tending to show a partisan religious bias. If the letter, on the other hand, held the Filipinos as a people up to ridicule, as was sometimes the case, the article would be copied in the American papers in Manila and translated into Spanish and the Filipino dialect, and would quickly reach the neighborhood where the writer of the letter lived, and would utterly destroy his usefulness in that neighborhood by rendering him unpopular and destroying the confidence of the natives in him. It was attempted by the writers of such letters to avoid responsibility for them by the statement that they were confidential and were not intended for publication; but the evil had been done. The admonitions of Superintendent Bryan

had the motive I have explained, and had not the slightest purpose to keep the truth from the American people. Indeed, one or two teachers, notably one in Abra who did not like his assignment by Superintendent Atkinson, wrote home the most bitter attacks upon the educational system to one of the Boston papers. Superintendent Atkinson was good-natured enough to allow him to remain in office for two years although guilty of deliberate misrepresentation, for fear it would be charged that criticism was being suppressed. He did it against my advice, which was that the teacher be discharged. A teacher who accepts employment under a plan of education and then spends much time in holding the work of his superiors up to public scorn is certainly not likely to be a loyal assistant in carrying out the policy of his superior.

The character of the teachers in the Philippines has been attacked on the faith of one letter received from a civil officer, whose stay in the islands was sadly short and in one remote province, and whose statements only purported to relate to his province. This is most unjust. The teachers were selected by reference to the heads of American universities, and I was agreeably surprised that, with the hurry that inevitably accompanied their selection, they proved on the average to be such a fine set of men and women. They have done great work in the islands, and while there have been fools and knaves among them, the great majority have done nobly, and have deserved well of their country. It is too bad that the bitterness engendered by the deep feeling of anti-imperialism should have led to their being thus traduced.

To return again to my text, I am asked, Are the

people of the islands not still subject to the surveillance and annoyances which they encountered under the Spanish rule? With respect to this I should like to say first, that any inhabitant of the Philippine Islands is entitled to apply to court for the preservation of every right mentioned in the Bill of Rights, save the right of trial by jury and the right to bear arms, and that if he will assert his right, it will be secured to him.

It may be that in the Province of Cavite, where ladronism is so ingrained that it has been necessary at times to declare martial law and to suspend the writ of habeas corpus, this is not true. Everywhere else, it is the fact. Now the question is asked, Are not people arrested for exhibiting seditious plays? My answer to that is that they have been. In Manila, the exhibition of a play in which the American flag is stamped upon and spit upon, and American soldiers are represented as being killed, and the American nation as overwhelmed by violence, is an invitation to force and violence against the government by the ignorant populace, and its suppression by arrest of the instigators is no violation of the Bill of Rights.

The question is asked whether a man may advocate the independence of the islands by a peaceable means and be free from prosecution and persecution by the government. My answer is that he may. There is a party, — the Nationalist Party, — a plank in whose platform is the obtaining of independence by peaceable means. I do not mean to say that where a suspected insurrecto, one suspected of membership in the physical force party, is loud in his advocacy of independence, he may not by the secret service bureau of the police

be subjected to surveillance, but that is an incident from which even citizenship in this country is not free. It suffices that he cannot be prosecuted or convicted for advocating independence by peaceable means.

But it is said that the Filipinos do not now enjoy civil rights, though declared in the statute and afforded by resort to courts, because Congress could take them away by repealing the statute, or because the Commission can suspend the writ of habeas corpus under certain circumstances. Even in this country, the writ of habeas corpus may be suspended in times of great public disturbance, and it is thought generally that the supreme legislative body is best adapted to exercise the necessary discretion to do so. In two years, when the popular assembly is elected, then it will take the vote of two houses to suspend the writ. If a man may assert all civil rights in court of his own motion and maintain them, I conceive that he is enjoying those rights, even though they are not secured by a constitutional amendment. A statute is as binding as the Constitution as long as it is in force. The people might repeal a constitutional declaration of right, but that hardly prevents the declaration from being effective or useful.

Next we have attempted, as far as we could, to relieve the political situation in the islands from certain disturbing factors, growing out of their religious history. Spain took over the islands in 1564, when she sent Legaspi as military commander of a fleet of five ships, and five Augustinian friars, including Urdaneta, to take possession of the islands. With very little friction she assumed sovereignty over the whole Archipelago, and it is not too much to say that the islands

were brought under Spanish control and influence not by force, but by the peaceful exertions of the Spanish friars of the five orders, the Dominicans, Augustinians, Recollets, Franciscans, and Jesuits. The men of these religious orders labored for three centuries to make Christians of the Filipino people. They taught them the arts of agriculture, and gave them other instruction. Until the nineteenth century, they exercised great control over the natives by reason of their sincere protection of the natives' rights. Before 1800, they received natives into their orders, and they permitted the hierarchy to be partly filled by natives. During the last century, however, there grew up a feeling of jealousy between the native clergy and the friars, growing out of their rivalry for rectorships in parishes throughout the islands. Added to this, when the Suez Canal was opened, hordes of Spaniards came to the islands, offices were greatly increased, taxes became heavier, and the hospitality of the Filipinos, so freely offered, was abused. The young and educated Filipino began to have conceptions of liberty and a better administration of government. The Spanish authorities were glad to use the friars, who were reactionary in their opinion, as civil instruments in the detection and prosecution of such sentiments. Hence it was that the government and the friars were brought together in opposition to the Filipino people, and a hostility was engendered which knew no limit, against those priests whose predecessors, with utmost self-sacrifice and loving devotion to duty, had Christianized the islands and prepared their people for a higher civilization. The spirit of vengeance against the friars was sufficiently shown in the revolu-

tion of 1898, when forty of their number were killed by the people and the insurgents, and three hundred were imprisoned and subjected to all sorts of indignities and suffering until released by the American troops.

In this state of public feeling, it is not surprising that the ownership of 400,000 of the best acres in the islands by the religious orders caused an agrarian revolt among their tenants, and the question of the collection of their rents, their title to the land being clear, became a very serious one. They did not collect any rents from 1896 to 1903. Courts were then opened, and the friars had the right to resort to them for collection, not only of the rents just accruing, but also for the rents from 1898. A general attempt to collect such rents must have resulted in judgments. There would have followed the eviction of some 60,000 people at the instance of the unpopular religious orders. The situation was critical. A visit to Rome for consultation upon this question seemed wise, and it was undertaken. A general basis of agreement was reached with the Vatican, and after a year of negotiation in the islands, a price was fixed upon the lands and the contract of purchase made last December; the money for the purchase price has been borrowed, and is in the banks awaiting perfecting of the titles and the surveys necessary for the description of the land. As an accompaniment of the purchase of the lands and a result much to be desired, the number of friars in the islands has been reduced from something over 1000 in 1898 to about 246 on the first of January, 1904, and of these 246, 83 are Dominicans who have renounced any right to go into the parishes, 50 are infirm and unable to do any work, so that only about

100 are available, and many of these are engaged in educational work. The intervention of the Spanish friars, therefore, ceases to become important, because there are not enough of them in the 900 parishes to cause any considerable disturbance. This certainly removes a great cause of contention and contributes to the tranquillity of the islands.

When the mission from Rome returned to the Philippines, and the Filipinos were advised that the Roman pontiff would not formally and by contract agree to withdraw the friars as a condition of the purchase of the lands, Aglipay, a former Roman Catholic priest, took advantage of the disappointment felt at the announcement to organize a schism in the Catholic Church, and to found what he calls the "Independent Filipino Catholic Church." Aglipay was a priest rather favored by the Spanish hierarchy. He was made the Grand Vicar of the diocese of which Vigan is the head,—the diocese of Nueva Segovia,—and exercised the functions of the bishop at times. When Aguinaldo went to Malolos, however, and thence to Tarlac, Aglipay appeared and acted as his chief religious adviser. He was called to Manila by the archbishop, and, declining to go, was excommunicated. Subsequently he was given a guerrilla command in Ilocos Norte, and as a guerrilla leader acquired a rather unenviable reputation. His generalissimo, Tinio, issued an order, which I have seen, directing that he be seized and captured wherever found, and turned over to the military authorities for punishment as a bandit. However, he surrendered among others, and gave over his forces to the United States, and then devoted his attention to church matters. His plan of organizing a new

church did not take form until after the announcement I have mentioned. The hatred of the friars gave force to his movement, and he had the sympathy of many wealthy and educated Filipinos, who declined to join his church and were not willing to leave the Roman communion, but whose dislike for the friars and the friar control aroused their opposition to the apparent course of Rome in this matter.

The adherents of Aglipay came largely from the poorer classes throughout the islands. The vicious and the turbulent all joined his ranks ; every demagogue and every disappointed politician who saw the rapid spread of the new church joined it in order to get the benefit of its moving strength. In this way it has occurred that Aglipayanism means one thing in one place and another thing in another, and that while generally it may be said that the members of the church are recruited from those who would join an insurrection did opportunity offer, there are many respectable followers of Aglipay, who separated from the Roman Church chiefly on the basis of opposition to the friars. Aglipay has created fifteen or twenty bishops, and has come into conflict with the Roman Church in respect to the ownership of churches and conventos, and this presents the very serious question which is now pending in the islands.

Under the Concordat with Spain, Spain, by reason of the control of church matters which was given her, assumed the obligation of the construction of churches and conventos and to pay the priests a yearly stipend. As we have seen already, the parish priest, who was usually a friar, had absolute and complete control over the people and parish where he lived. He induced the

people to contribute material and work to the construction of the church, to the building of the parish house or convento, and the laying out of the cemetery. He selected his site in the most prominent place in the town — usually upon the public square. The title in the site was either in the municipality or in the central government of Spain as the crown land. The close union of Church and State always made it unnecessary to procure a formal patent from the State to the Church, and so it is that most of the churches, including, it is said, the Cathedral of Manila, stand upon public property. Now in towns in which a large majority, and there are quite a number, of the people belong to the Aglipayan church, it is quite natural that they should think that the church and convento and cemetery belong to the municipality and so should be used for the majority of the people of the municipality. In quite a number of cases, the priest himself has ceased to remain in the Roman communion, and has joined the Aglipayan ranks as a priest. In that case he has simply turned over the possession of the church, convento, and cemetery to the municipality, and received it back as a priest of the Aglipayan church at the instance of the people of the municipality.

Personally I am convinced that in most cases the churches, conventos, and cemeteries belong, not to the people of the municipality or to the municipality, but to the Roman Catholics of the parish ; that they were given to be used by the Roman Catholics of the parish for Roman Catholic worship, for the residence of the Roman Catholic priest, and for the interment of Roman Catholics ; that this was a trust which required, if executed, that the title should be, according

to the canon law, in the bishop of the diocese, and that therefore the Roman Catholic Church is entitled to possession through its priests for the benefit of the Catholics of the parish. But it is difficult to convince the people of a municipality, who have constructed the church and convento, who have always worshipped in it, and who have always regarded it as a municipal property, to give it up as Roman Church property. The Executive has been powerless to prevent a change of possession where that change of possession was peaceable and effected without violence or disturbance of the peace. The only recourse for the Roman Church in such cases is to the courts. Both sides have avoided the courts on the ground that it would be expensive to go to them, and have looked to the Executive to assist them. Much feeling exists over these questions of property, and we find that good, conscientious Catholics insist that it is the business of the Executive to determine in advance the question of title or rightful possession, and to turn the Aglipayans out. Such a course would involve the Executive in all sorts of difficulties, and is contrary to our principles of judicature, in that it would be taking from the municipalities something which they were in possession of, without due process of law. It is said that because municipalities are merely the arm of the central government, and because, as the Executive ought to know, the municipalities have no title to the property, it is his business, as the Executive and superior of the municipalities, to order them out of possession. But the difficulty here is that under the Treaty of Paris the property of the municipality, as well as the property of the religious orders, is declared to be inviolate

by the central government. And it would, therefore, savor of most arbitrary action, were the governor to declare the title in advance and direct the municipality to give up possession. In other words, the municipality in such action is to be treated as a quasi-citizen, and as having property rights over which the central government has no arbitrary control. It is proposed now to establish a special tribunal, which shall go through the provinces and consider all the questions arising from the churches and conventos and cemeteries, decide the same, and place the judgments in the hands of the Executive and have them executed. In this way a burning question, and one which is likely to involve a great deal of bitterness and perhaps disturb the public peace, can be disposed of, with least friction and a due regard to everybody's rights.

There still remain to be settled claims for damages by the Roman Catholic Church against the government for the use and occupation of churches and conventos and injuries done to them by the soldiers, and also the settlement of certain disputes over the right to control and direct priests. Archbishop Guidi has signified his intention of coming to this country to settle these claims, and other matters. I hope that his coming will not be far distant.

And now, gentlemen, what of the future? It has been strongly urged by a large number of citizens of high standing that we ought now to promise ultimate independence to the Filipinos. I beg respectfully to differ from this view. The promise which it is proposed to give is a promise which must be conditioned on the fitness of the Filipinos for self-government. The promise holds up to the people of the islands for

constant discussion as a present issue the question, Are we now fitted for self-government? There may be some people in Manila and the islands who know and are ready to say that the people are unfitted, but, on the other hand, the Filipinos are not different from other people, and the great majority of them would say with emphasis, We are entirely fitted for self-government. The moment, therefore, that formal promise is made that the Filipinos shall have independence when they are fitted for it, it will be accepted by them as a promise of independence in the immediate future. Dealing with the Filipinos, we must speak with exact truth. The truth may be unpalatable, but they will accept it. But we must not mislead them. Now, if we are right in our plan that we have begun, of trying to do this people good, of extending to them civil liberty, of giving them an opportunity for education, and of learning the art of self-government and political control by exercising a part of it, then it is essential that they should assist as far as possible in the government, and should help it along. The movement, in order to be a success, must needs have the support of the intelligent and conservative, but if the issue as to their fitness for self-government is thrust into politics, and the construction of the promise as one of the immediate future follows as it certainly will, then the interest in the present government, even on the part of the most conservative, must wane, and the plans for a gradual education of the Filipinos in self-government must fail. I agree that if all one wishes to do is to set a government going, to fill its offices with intelligent Filipinos, and then to abandon the islands, one may readily fix a time for the purpose, but

that is not my idea of the duty of the United States, now that we are in the islands. If it is, our plan of education is wholly at fault. The moment that we move out of the islands, if we leave in the few years proposed, the American teachers will go, and the study of English, which has received such an impetus from their presence, will cease to be regarded as a benefit, education will fall by the wayside, and a return will rapidly be made to the condition which existed under Aguinaldo. The present government of the Philippine Islands spends two millions of dollars annually for education, which is about one fifth of the gross income of the central government. Do you think that a government under Aguinaldo would spend that amount of money? Under such a government it would be absolutely impossible to preserve the civil rights of the individual, and we should have a government of the few, tempered by assassination and varied by factional strife and occasional revolutions in different islands. All the property of the Roman Catholic Church would doubtless be confiscated for the benefit of the State Church with Aglipay at its head. That, at least, is what Aglipay expects. That was what the Aguinaldo government did do with the property of the religious orders. Of course, it will be said that in the agreement of transfer all vested interests can be protected by stipulations which the United States could enforce, but the necessity for constant watchfulness to protect against abuses by the populace and a strong party spread all over the islands would be equal to the work of actual government. Now in such a condition of things, when the presence of the United States in the islands is necessary to maintain order and sustain a

well-ordered government, to secure civil rights to the people, and to aliens with vested interests, it seems to me most unwise to introduce an issue by a promise of conditional independence which will wean the people away from the importance of the present government and invite them to a discussion of the wisdom of an absolute change. If the people are fit for self-government, then I agree that the declaration ought to be made, and that we ought to turn the islands over. It is a difference on this point that is the real difference between the signers of the petition to the conventions for a promise of independence and those who oppose the signers. I have heard it said by people who have not thought much on the subject, that they did not see any great difference between the view of the signers of the petition for independence and mine. The difference is fundamental. They are really in favor of an Aguinaldo government with a gloss of declarations in favor of liberty and constitutional freedom and the Bill of Rights, which, I verily believe, will never have any force whatever. I am in favor of teaching the people how to govern themselves, and I cannot assume that such a lesson, so difficult to learn, can be taught to a people, ninety per cent. of whom are grossly ignorant to-day, without any political experience whatever, in five years, as some of our opponents say, or in twenty years, as others suggest. I regard the learning of English as one of the important steps in the education of these people, important in creating a solidarity among the people and in enabling the people to understand each other, important in bringing them into touch with the Anglo-Saxon world where they shall drink in the principles of civil liberty. My standpoint is the

benefit of the Filipino people. To state the matter succinctly, we have secured to the Filipinos, by what we have done, civil liberty, and we are gradually extending to them political control. What the opponents of our policy in effect and result are contending for is that we should turn the islands over to a small minority, who will establish a government in which civil liberty will be lost and political control reside with a few. The standpoint of the signers of the petition and others who stand with them seems to be that of decently getting rid of a nasty job. I differ with them first, in thinking that the discharge of the duty which is imposed upon us is a bad job, or that it is going to involve any such disaster as is prophesied. It is said that it will implant the spirit of tyranny and absolutism in this country. As long as those who exercise authority in the Philippine Islands are responsibile to the eighty millions of people in this country, the spirit of absolutism is sure to be kept well in abeyance. What it will develop, on the contrary, is the spirit of altruism, of a desire to help a poor people who need our help, of a desire to lift them up and to do it at the expense of great national effort and sacrifice. Now this is said to be, by those who speak for the petitioners, so altruistic as to be what they would call "sentimental" or "Lunar politics." I do not agree. Those who urge the delivery over of the islands in a few years evidently think it sufficient if we frame a government, set it working, and let it go. In their anxiety to get rid of the islands, they put themselves unconsciously in the attitude of the United States senator who, in expressing his earnest desire to get rid of the Philippines, consigned the Filipinos to Hell. Their anxiety

finds its reason in the fear that the American people, deriving advantage from association with the Philippine Islands of a commercial and financial character, will never be willing to give up their control over the islands, however fit the Filipinos may become for self-government. It is their distrust of the American people that leads such men into anxiety to get rid of the Filipino people before the association shall become profitable. Now I do not think that this feeling is justified, because I feel sure that after the Filipino people become well educated, and we have a decent government there in which the Filipino people take part, and the Filipino people request independence, the American people will grant it to them. Much is predicated by Mr. Storey on the undoubted hostility of the American merchants in the islands to the Filipinos. He says in effect that this gives no good augury of what treatment of the Filipinos may be expected in the future. I have in another place attempted to explain the peculiar circumstances which produced this hostility, and have pointed out that its existence was against the pecuniary interest of the merchants and might be expected to cease as soon as the merchant body was increased by larger investment of capital and the coming of merchants of more capacity and experience. But under any circumstances, but comparatively few Americans can ever have pecuniary interests in the islands, and in spite of assertion to the contrary, I am confident that the whole American people will do justice. Why should we be impatient to leave the islands? If we may properly stay five years or twenty years to prepare the people, what objection on principle can there be to our

staying until our work is thoroughly done? If it will take forty or fifty years, or longer, thoroughly to prepare the people for popular government, is it not wiser and better for the Filipinos to maintain the present relation for that time than to allow the people to go at the end of five years and fall into the habits of certain so-called republics, of revolution, anarchy, and all sorts of misgovernments? I do not dwell upon a danger which will arise, if we set going a government that cannot maintain order and protect vested rights; but foreign intervention in such a case is most probable. In such event, the amount of self-government allowed to the Filipinos by an intervening European government is not likely to strain their capacity, however limited. But it is said that the influence upon our government of governing the Philippines for a long time will be bad. I do not think that thus far it has had an evil influence. If it were a spoils government there, I agree it might become a stench in the nostrils of every one, but as a matter of fact the government has been entirely non-partisan. Without knowing the politics of all the judges, and the other appointees of the islands, I think it only fair to say that there are about as many Democrats in the government as there are Republicans. A civil service law, much more stringent than the National Civil Service law, is enforced with fidelity, and while there is much difficulty in obtaining a suitable personnel for the whole government in the islands, I think we have been fairly successful in getting competent agents. While the criticism of the anti-imperialists and their attacks upon the policy of the government worked great injury in misleading the Filipinos into a continuance of the war,

their criticism has perhaps unwittingly been of some value in upholding the standard of the government in the islands, because it has put that government on trial from the beginning, and has made every member of it strain himself to make it worthy of approval.

What the Filipino people need now first of all is material development in the islands, and that the people of the United States can secure them if the Filipino government is given the requisite powers. It is a development that under an independent government would come much more slowly (if indeed it came at all) than it will under the auspices of the government of the United States. Capital will feel greatly more secure under a government which has the guiding hand and brake of the United States than it would under Aguinaldo and his followers. The cost to the people of getting capital into the country will be vastly reduced. The permanence of the improvements and their character will be much better for the country under present conditions than where the uncertainty of a changing government will treble or quadruple the risk.

But it is said that many of the best Filipinos ask for a declaration of policy by the United States, and declare that the Filipinos will never be satisfied except by ultimate absolute independence. And reference is made to recent speeches by some of the Filipinos visiting America under the auspices of the Filipino government. That delegation contains men of differing political views. It was selected so as to give every party representatives. I venture to think that even the most positive Filipinos are unable to say what their countrymen will desire years hence. If the present view or wish of a majority of the Filipinos were deter-

minative of our duty in the premises, it would be easy to settle it by a vote, but that is assuming the very point in issue, to wit: whether they are at present capable of wisely settling the best form of government for themselves.

Our policy in the Philippines must be "The Philippines for the Filipinos." This duty we have assumed, and it is the duty which we shall doubtless discharge. It is fortunate that this policy is also the best policy from a selfish standpoint, for thus we have additional assurance of its being maintained. The more we develop the islands, the more we teach the Filipinos the methods of maintaining well-ordered government, the more tranquillity succeeds in the islands, the better the business, the greater the products, and the more profitable the association with those islands in a business way. If we ultimately take the Philippines in behind the tariff wall, as I hope and pray we may, and give them the benefit for their peculiar products of the markets of the United States, it will have a tendency to develop that whole country, of inviting the capital of the United States into the islands, and of creating a trade between the islands and this country which cannot but be beneficial to both. Now, under these circumstances, is it impracticable, is it wild to suppose, that the people of the islands will understand the benefit that they derive from such association with the United States, and will prefer to maintain some sort of bond so that they may be within the tariff wall and enjoy the markets, rather than separate themselves and become independent and lose the valuable business which our guardianship of them and our obligation to look after them has brought to them?

Have we not given an earnest of our real desire to teach them the science of self-government by providing that in two years after the census shall be published, a popular assembly, which shall exercise equal authority with the Commission in a legislative way in the islands, shall be elected by popular vote? I do not look for very encouraging results from the first or second session of this assembly. I have no doubt that in the beginning there will be in the assembly extreme and violent partisans of immediate independence, and of autonomy and a protectorate, and of a great many other impracticable schemes, some of which will include attempts to obstruct the government. By proposed legislation of various kinds, members will seek to accomplish purposes that are incapable of accomplishment by legislation, but I shall not be discouraged at this, for that is to be expected of a people who have had no legislative experience. Ultimately they will reach the safe and sane conclusion that laws which are to be passed are those which their experience justifies, and that discussion and analysis and calm consideration and self-restraint are all necessary for successful legislative measures. It is said that we are giving them this legislature too soon. I think my friend Mr. Colquhoun thinks so. For my part I think not. The people desire it. It will be an imperfect but useful medium of communicating their wishes, and it will offer the most valuable school to the intelligent part of the population in the science of government. It must be borne in mind that it is not only the ninety per cent. of ignorant Filipinos who need to be tutored in the art of self-government, but the remaining ten per cent., even including the two per cent. of the cultured and

educated, are sadly in need of political education, and they may find it in the popular assembly, and may learn the difference between theory and practice in carrying on a just government. Does it not seem rather unreasonable to insist on promising the Filipinos independence in advance even of a trial of the test of their political capacity in the control of one legislative chamber?

But now, finally, the government of the Filipinos is pronounced an absolutism. That has a dreadful sound. But when the charge is analyzed, it is found not to mean any more than that the Filipinos do not have complete independence and self-government. It is true they do not. They are not capable of governing themselves wisely now, and America's intervention is for their good. In so far as America does intervene in the government, it is not Filipino government, hence it is absolutism and tyranny. Does this characterization aid the argument any, for we revert again to the question whether the self-government of a people, however bad, is always better than a good government of the people by another people. You may call the latter alternative absolutism, if you will. I prefer it to the former. In two years the Filipinos will have autonomous municipal government, partly elective provincial government, and control by election of one of the two coördinate branches of the highest legislative body of the islands. This may be absolutism, but if it is, then the word has a different meaning from the one usually given it.

But I am asked how capable of self-government must the people become before we give them an opportunity to be independent, if they will. Is it to be a

perfect government like Plato's Republic? If so, it will never come. The government by the people of the Philippine Islands, like the government by the people of other countries, will always have defects. The only standard which can be laid down is that the common people shall be educated by elementary education to understand simple principles of government, and to be capable of forming an intelligent opinion, which shall control their officers while in office. People among whom there is an intelligent public opinion are capable of self-government. That is the goal toward which we ought to move in the Philippine Islands. If we follow out the programme, which I hope we may, and it wins supporters as it progresses, we may reasonably count on obtaining the gratitude of the people of the Philippine Islands, which President McKinley spoke of in his instructions to Secretary Root, when he said:—

"A high and sacred obligation rests upon the Government of the United States to give protection for property and life, civil and religious freedom, and wise, firm, and unselfish guidance in the paths of peace and prosperity, to all the people of the Philippine Islands. I charge this Commission to labor for the full performance of this obligation, which concerns the honor and conscience of their country, in the firm hope that through their labors all the inhabitants of the Philippine Islands may come to look back with gratitude to the day when God gave victory to American arms at Manila, and set their land under the sovereignty and protection of the people of the United States."

ADDRESSES AT THE DINNER

IN THE

HARVARD UNION

ADDRESSES AT THE DINNER IN THE HARVARD UNION

THE PRESIDENT, CHIEF JUSTICE FULLER

When the late Governor of the Philippines arrived at Washington, as soon as I penetrated the dense thicket of laurels that embowered him, he propounded this question: "How 's the docket?" I recognized at once the demonstration of his fitness for the highest judicial station. It is very true that I knew my friend had been a professor and Dean of a law school, had been a judge of a state court, had been Solicitor-General of the United States, and Judge of the Circuit Court of the United States, and Governor as aforesaid, and had discharged the duties of all those positions to great acceptance, but I had not realized before that he felt that interest in the docket which is considered a principal qualification of chief justices.

Of course I make that remark with some reservation. I make it, as the love letters of the young man by the name of Guppy were written, without prejudice. But letting the future take care of itself, we now find Mr. Secretary Taft occupying a different position from any heretofore filled by him, and I think I can assure him that we all have no doubt that the duties of that perhaps rather novel place will be discharged with the same success as those which have preceded it.

His present position brings him into close connection with the Chief Magistrate, and on that account I

venture to ask him to allow me in giving the health of the Orator of the Day to couple with it the health of the Harvard boy of 1880—the President of the United States.

SECRETARY WILLIAM H. TAFT.

MR. CHIEF JUSTICE, MR. PRESIDENT, AND GENTLEMEN OF THE HARVARD LAW SCHOOL ASSOCIATION: I think that I have inflicted upon you all that you ought to be called upon to bear, but given the honor of responding to the toast of the President of the United States, and that President the third Harvard President in the history of the United States, I have pleasure in responding.

Coming from Yale, I am able to report that we feel very proud of the President of the United States, for he has not wanted in appreciating the excellence of Yale men. We have a saying among us that he went through Harvard, and in spite of that remained a characteristic Yale man.

But, gentlemen, it is a pleasure to be called upon to respond to the toast of such a President. He differs somewhat from the two Adamses who also graduated here, but he does n't differ in the fact that they were educated as he was in an institution which makes it impossible that he should have other than the highest ideals. You may differ from him in opinion, but you know that the motives that prompt him are those that do honor to an educated gentleman coming from surroundings that make it impossible that he should have low motives, or that he should have other than high ideals.

Now, association with him leads to action. I have

not yet been obliged as a member of the Administration to accompany him in his pedestrian excursions along Rock Creek. I have not been obliged to go over a four-barred or a five-barred fence with him upon a horse. But I have followed him with great pleasure in what he has desired to accomplish in politics, and he has — as he must have from any one who knows him intimately — my highest and most loyal admiration.

And now, gentlemen, may I add a word, to say that I feel under great obligations to the Harvard Law School. I intimated this morning that I was connected with a school which tried to make a model of the Harvard Law School, and that for three years I studied law, in trying to teach it on the Harvard method, as I never had studied before. I *had* to keep ahead of the students; I was n't able to keep more than ten cases ahead of them. But the anxiety that that produced in me certainly introduced me to principles of law with which I am sorry to say I should n't otherwise have been at all familiar. I followed in the footsteps of your Professor Gray, and my head buzzes now as I recollect the trial of my gray matter as I attempted to understand and then teach the Rule against Perpetuities in his third volume — I think it is the third volume.

But, gentlemen, as I say, I have inflicted too much on you already. I desire to express my sincere and deep gratitude for your very kindly Harvard welcome.

The President: I feel deeply honored in being the medium to express our desire to hear from the honored Head of the University, "Prime Minister of the Realm of Education," as he has been justly called. His thirty-five years of patient devotion to noble ends, per-

sonally "looking for nothing again," have given him at last universal admiration, commendation, and affection.

Gentlemen, I call on President Eliot to address you.

PRESIDENT CHARLES W. ELIOT.

Mr. Chief Justice, Governor Taft, Members of the Law School Association: For me, you gentlemen represent the most successful of the Harvard professional schools — most successful, in the first place, in the relation of its receipts to its actual disbursements and its desirable expenditures; next, in the nature of its discipline and its method of instruction; and lastly, in its sure serviceableness to its students and to the profession. In all these essential respects the Law School is the most successful of the University's professional schools. And if there be a more successful school in our country or in the world for any profession, I can only say that I do not know where it is. The School seems to have reached the climax of success in professional education.

Consider how sure, how unfailing, its serviceableness has been to its graduates and to the profession they enter. We look back on its past with the profoundest satisfaction, but we look forward to its future with expectancy, and hope, and a good courage, and we see before it the possibility of a still more useful career; because the responsibilities of the legal profession are all the time mounting among the civilized peoples, and particularly in our democracy. Tremendous new problems are before the democracies, problems which can only be dealt with safely by courts and legislatures.

And we all know that courts and legislatures are what the legal profession make them. The future responsibilities of the legal profession in the United States will be grave indeed.

Some of these new perils I may venture to allude to. One is the need of a new, sound, firm definition of fair and unfair competition. Just there will be a crucial point of conflict during the coming years. We are in the face of enormous monopolistic combinations on each side of the industrial strife, and these combinations present to the legal profession, and to the courts and legislatures, — whose quality is determined by the legal profession, — the gravest problems.

Then, again, there is the extraordinarily increased dependence of each individual in the community on supplies and resources which come to the individual from afar and from strangers, — the individual being fed and warmed from a great distance, and given water, transportation, and buildings from afar as it were, — not by neighbors, but by immense combinations of dollars on the one hand and workmen on the other. The dependence of each individual citizen on others is increasing every day, and every day, therefore, there is more and more need of a new supervising power on the part of the state.

Let me mention one other grave problem for the solution of which we look ultimately to the legal profession: It is the provision of an adequate public force for the preservation of peace and order in a great, widespread democracy. That is something a democracy has never yet procured for itself; and the need of the adequate public force increases day by day and year by year. It is a need not only of the urban groups,

the cities and the large towns, but of the entire area of our country. Under the freedom of democracy the facilities and opportunities for crime and public disorder increase and are widely diffused; but thus far with this greater temptation to crime and violence has not gone any increased protective power of combined society. That protecting power, sure, firm, acting under law, we expect the legal profession of the future to provide us with.

Therefore I say that the prospect of usefulness or serviceableness for the legal profession was never so bright as in the democratic world of to-day.

The President: Gentlemen, the transition is easy from the bishop to the dean. Sidney Smith said that the difference between Scotch deans and English deans was that "English deans had no faculties." That does n't apply in any sense to my friend on the left, the Dean of the Law School, whose years of teaching and of administration, and whose books, have placed the Law School under an indebtedness that all recognize and all most cordially acknowledge.

DEAN JAMES BARR AMES.

Mr. President, Governor Taft, and Gentlemen: When, in 1895, Professor Langdell, after twenty-five years of distinguished service, resigned the deanship, I thought, having been associated with him from the beginning as a disciple and as a colleague, that I had a realizing sense of his great genius; but I did not appreciate then as I do now, after nine years of experience as his successor, how solidly the new

foundations of the Law School were laid during his administration. He is emeritus, but the policy which his originality and his far-sighted sagacity inaugurated still dominates the conduct of the School.

For this reason I have very little to report to you that is new. The School, I am glad to say, grows year by year more national. This year 740 graduates come to us from more than 100 colleges. This great success of course is your work; your success in practice reacts upon the School, and some of us have thought, as we saw this great influx of students, that it might be just as well for us if the tide of your success rose a little more slowly.

But there is one work of which perhaps you are not conscious, — your influence upon other schools. Some 70 men, formerly students of this School, are now teaching law in other schools. In the last ten years, and especially in the last three or four years, schools in all parts of the country, except the South, have been adopting our methods, our curriculum, and our case books; they are even borrowing our professors. We are in the lending business as to professors, — we have lent two to the King of Siam.

But, gentlemen, there is one respect in which I feel bound to admit the School has not taken the position which I think it ought to take, which I think it will take in the immediate future. We have not done much in legal authorship. I do not forget the remarkable books of Professor Langdell or Professor Gray and Professor Thayer and others, but those books are all too few. There is a reason for this. The system introduced by Professor Langdell necessitated the preparation of case books, and it is almost as difficult

to prepare a case book as it is to make a treatise. I am very glad to say that the work of preparing case books, so far as this faculty is concerned, is very nearly accomplished, and we certainly ought in the next ten years to publish a number of books of the highest class. If we don't, it is our fault, for we have opportunities for making treatises that are granted to very few. We shall write books on subjects that have been discussed by the brightest minds that have come to the School for the last twenty-five and thirty years, and if we can't profit by the discussions which we have had with you, as I said before, so much the worse for us. But I believe you will get books that are worth having.

We shall not forget, however, in the delights of legal authorship, that our first object is to train young men for the effective practice of their profession. To us the real distinction of the Law School is to be found in the true significance of its degree. It is our purpose that the degree shall represent even more in the future than in the past, that its holder is a man of capacity, of sound legal training, and above all a man of generous ambition and high character.

The President: It is very natural on an occasion like this that the contributions of the Supreme Judicial Court of Massachusetts to jurisprudence, and the great names of Shaw, Parsons, Parker, and others, should recur to the mind, and particularly does the thought come home to me, as Massachusetts has given three of its chief justices to the Supreme Court of the United States, one of whom is to-day upholding the highest traditions of his predecessors.

We are favored by the presence as our guest of the able successor, in that illustrious line, and I ask the Chief Justice of Massachusetts to respond to a sentiment to the Court of which he is the honored head — Chief Justice Knowlton.

CHIEF JUSTICE MARCUS P. KNOWLTON.

Mr. Chief Justice and Gentlemen: That I may not seem to be before you under false pretences, my first words shall be a confession: This is the first time that I ever stood within the precincts of the Harvard Law School. I did not have the best legal education before my admission to the bar. This confession, although made to my captors as officers of the law, is entirely voluntary, and may be used as evidence in any court. But I would not have you follow the example of too zealous detectives, and extend the confession beyond its true meaning, for, like the learned Secretary of War, I am a graduate of Yale in the department of Liberal Arts; and as he has borne her banner to distant parts of the world, so have I borne it here, even under the walls of Harvard, without humiliation or regret.

But speaking very seriously, I think that the lawyer who did not include in his legal education a course in the Harvard Law School, or in one of the best of its imitators, suffered a great loss. He lost an opportunity of training and cultivating his faculties at a time when he was capable of rapid intellectual growth; he lost the stimulus of companionship with others of quick minds who were impatient and eager to come to a mastery of legal principles; he lost the instruction and guid-

ance of learned professors whose experience had taught them how to lead their students by the shortest and safest path to the goal of their early ambition.

If I may be permitted to speak for the courts of Massachusetts, I commend in the strongest terms the work of the able young graduates of the Harvard Law School, who sometimes argue before us important questions of law during the first year after their graduation. Their briefs and oral arguments often exemplify the best methods of old practitioners. With the better training of law students the court recognizes a distinct advance in the preparation and presentation of legal arguments within the last quarter of a century.

But intellectual progress does not include everything. In this materialistic age there are tendencies toward commercialism in our profession, which if not checked will surely lead to its degradation. In this School young men are taught that, while valuable service has its proper compensation, the practice of law is something nobler and higher than a mere means of acquiring wealth or gaining a livelihood. They are told that it is the application of rules and principles which lie at the foundation of social order and individual happiness, and which touch at every point the highest interests of mankind. With such teaching, deeply impressed on susceptible minds, we may hope that the law as a profession will never cease to be held in honor.

The teaching of schools like this helps to keep our legislation on a lofty plane. Some legislators are like physicians whose treatment deals only with symptoms. They are ignorant of the philosophy of

the law and the relations of statutes to one another. Without educated lawyers of high moral standards, the legislative department of the government would be hopelessly inefficient and dreadfully dangerous.

The influence of this school upon the characters not less than the intellects of its graduates has been a mighty force, working through others, in giving to the laws of Massachusetts their general excellence. I doubt not that it is felt in like manner in other States, as it certainly is in the Congress of the United States.

You do well to celebrate this anniversary of this important department of Harvard University. If the future of the School may be predicted from the success of its past, it surely will be bright with the illumination of honorable achievement.

The President: To the presiding officer there never can be an embarrassment of riches, he never can be tempted to exclaim: "How happy could I be with either, were t' other fair charmer away." After all, presidential timber and judicial timber are very much alike when lying around loose.

By the discharge of his duties as Attorney-General and Secretary of State, the name of Richard Olney became, as it remains, a household word throughout the United States, and then throughout the world. I know that we shall all be delighted to hear from our brother Olney on this occasion.

HON. RICHARD OLNEY.

Whoever follows the honored President of this University necessarily follows at a long distance. I propose, however, to try to follow his lead so far as to

touch upon certain prominent features of the times in which we live, features which are of peculiar interest to lawyers as a class, as is everything which pertains to the principles of government and the fundamental laws of the land. If it were true, as is sometimes said, that the law as a calling has lost its former characteristics, and that the modern lawyer has become simply an uncommonly well-equipped man of business, there would be little or no pertinency in what I desire to say. But, in spite of some evidence to the contrary, I believe, and prefer to believe, that the lawyers of the day have not abdicated what is their normal function under every government having a right to be called either free or enlightened, — that they are still the ruling class in our own country in the sense that, in matters of law and of government, they determine the predominant tone and temper of the community. In that view, what I ask you to note is that the old order is changing, changing swiftly and vitally, and that whether the change be for good or for evil, is to be temporary or lasting, are matters to which the American bar cannot address itself too seriously. A revolution, indeed, is in progress, none the less real that it may not be generally recognized; only the more important that it relates to ideas and to ideals rather than to things visible and material; only the more insinuating and sure in its advance that it follows legal forms and marches silently and peacefully without beat of drum or drawing of sword. Speaking of the scientific movement of the age, the late John Fiske declared that "the men of the present day . . . are separated from the men whose education ended in 1830 by an immeasurably wider gulf than has ever

before divided one progressive generation of men from their predecessors." The declaration, as it touches the American people, is hardly less applicable to law and government than to physical science, and the lawyers and statesmen of seventy-five years ago would have been as startled by current American theories of government as would the scientists of that date by the modern developments of electrical energy, by the phenomena of radium, the X rays, or the mysteries of bacteriology. That the new order is better than the old — better in point of logic, of morals, or of practical results — is possible and debatable. I leave that question wholly on one side, and only aim to point out that a new school of thought has arisen, and that the American lawyer of to-day finds himself grappling with ideas for which he will search in vain any writings or utterances of the great American jurists of two generations ago. The welcome presence here of my friend, the eloquent orator of the day, suggests some of the most striking of the new doctrines. He has filled with éclat certainly the second, if not the first, most important post in the national Department of Justice. He has been a judge of the Circuit Court of the United States inferior in merit and repute to none of the eminent holders of the like office. He may in the time to come — and prophetic voices to that effect are by no means uncommon — become a member of the greatest court the world has seen, or even chief magistrate of the American republic. I venture to say, however, that when his career is run and is summed up by the historian of the future, the solicitor-general, the judge, the Secretary of War, the holder of whatever other office he may fill, will rank

second to the governor of the Philippine Islands. Having absolute mastery over the lives and fortunes of 7,500,000 people, he has won general admiration and applause by the justice and skilfulness of his rule, and by the tact, patience, and humanity of his dealings with an alien and subject race. Yet upon the American lawyer, steeped in the doctrines and traditions of the past, the inquiry at once forces itself, what place has despotism — even the most benevolent and most intelligent — in our American political system, and where by searching shall we find it out? We may pursue the inquiry after the manner of the Sunday newspapers and their puzzle pictures. Given the Constitution, — the national chart within whose four corners the lawyer must look for a warrant for every governmental act, — puzzle to find therein the despot. If and when he is found, that my genial friend from Ohio will easily take rank as among the best specimens of the class need not be questioned. But the despot in our governmental scheme is by no means the only thing present conditions invite us to look for. There are others. The orator of the day, for example, with a laudable frankness which ignored any claim of benefit to the people of the United States from its present oriental experiment, defended it a few days since on humanitarian grounds. According to him, we are rich enough and can afford it, and therefore it is our duty to sacrifice American lives and American treasure indefinitely and without stint for the education and elevation of Filipinos according to American standards. But out of any such proposition at once issues another legal puzzle for the modern American lawyer, — to find in the national Constitution the prin-

ciple of altruism ; to find in a frame of government declared on its face by the people adopting it to be designed to " secure the blessings of liberty to ourselves and our posterity " any authority for purely philanthropic enterprises — any right in that government to turn itself into a missionary to the benighted tribes of islands in the South Seas seven thousand miles from our shores — or any power to tax the toiling masses of this country for the benefit of motley groups of the brown people of the tropics, between whom and the tax-payers there is absolutely no community either of interest or of sympathy. Again, international law being part of American law, and the equality of nations *inter sese* without regard to size or strength being the very basis of all international law, still another search is needed to find in American law any right in a strong nation to appropriate the sovereignty or territory of a weak nation, either in the name of " collective civilization," or in any other name or on any pretext whatsoever. And, if the search be successful and the doctrine vindicated that there are superior peoples in whose interest inferior peoples may rightfully be subjected to a process which would be expropriation if it did not lack the element of compensation to the victims, question — is not a rule which is good for nations good also for individuals, and why may not the lives and property of weaker and inferior citizens in any community be rightfully expropriated for the benefit of the stronger and superior ? Again, the first principle as well as essential merit of a written constitution of government being that even the most desirable end must be pursued and attained only in conformity with the fundamental law, must not

our national code be most carefully interrogated for some symptom of the doctrine that the end sanctifies the means, and that to "get there" by short cuts or paths unprovided or forbidden is anything else than sheer lawlessness and usurpation? Again, is the great end of government what the founders of the Republic conceived it to be, namely, the maintenance of social order and the affording of equal opportunity, or have times and men so changed that paternalism supersedes individualism, and that we are to look with favor on an ever widening field of public activity and an ever narrowing field of private enterprise? Again, as consequences of the Civil War and of the commerce power and the Fourteenth Amendment as judicially interpreted, has the State become so weak and so limited in function, and the general government so strong and so pervasive, that the latter now counts as the chief factor in the life of the American citizen, that the State comes second in his interests and affections, and that the sphere of local self-government is seriously curtailed?

That new conceptions of law and of government like those just indicated, with others akin to them, are rife among us to-day; that they are accompanied and accentuated by a political theory that the "saints" should enjoy the earth, and that the conglomeration of races, miscalled the Anglo-Saxon, is the "saints," is not to be denied. They cannot be ignored because in seeming violent contradiction to what Americans have professed to love and have loudly boasted of in the past. They cannot be whistled down the wind as pure speculations, since they are the basis of novel measures and policies of the most momentous char-

acter. Neither do they lack defence and justification by good men and by able men. If sound, they should be inculcated as such upon the laity, should be acted upon as such in the courts and the halls of legislation, and should be taught as such in the Harvard Law School and all other law schools of the country. It is imperative, therefore, that the lawyers of the day should give them earnest consideration. It is for them to say whether there is a break with all our past which ought to be and is to be perpetuated; whether American principles as embodied in American Constitutions and State papers, once deemed models of wisdom and inspirations to humanity the world over, are now to be relegated to the limbo of antiquated superstitions; whether the flag shall symbolize the ideas and the ideals of the great Americans who are identified with all that is most glorious in our past history, or shall stand for the theories of the new guides and teachers of the present hour. That a function so weighty in point of responsibility and so honorable by reason of that very responsibility will be satisfactorily discharged by the lawyers of the country is not to be doubted. To Harvard men in particular, I may well close by commending the wisdom of Lowell, who, being asked how long the American Republic would last, answered that it would last as long as the principles of its founders were valued and acted upon.

The President: It is not quite fifty-one years since the official landing of Perry's expedition, and only two or three months over fifty years since the first treaty with the Empire of the Morning Sun. In that fifty years the young fellows of that day have seen strange

sights, and none more impressive than the progress of that remarkable people in manufactures, in trade, in military and naval fitness, and in just laws. We have with us in Baron Kentaro Kaneko a brother of our own, a distinguished representative of Japan, a member of its House of Peers, and one of the framers of its present constitution. We hope he will give us the pleasure of hearing from him.

BARON KENTARO KANEKO.

Mr. Chief Justice and Gentlemen: There was an old saying in Japan, "Never preach before Buddha, but make your own confession." I might apply that precept very appropriately to-day, because I have so many of my legal Buddhas before me. Ex-Dean Langdell and Dean Ames, on my right, and Professor Gray, on the left, are my legal Buddhas; therefore I will not make any speech before them, else I might violate our Buddhist precept, but I might make my own confession, and include it among the many tributes to Harvard Law School.

When I returned to Japan, after graduating from Harvard Law School in 1878, I entered the service of our Government. At that time, and for many years afterward, our country might be said to be in the era of imitation. We were then obliged to imitate the criminal code and civil code and commercial code, the organization of courts, and departmental regulations and ordinances; everywhere and in everything, we must copy and imitate the laws and customs of the Western Powers. Why? Because at that time we were negotiating for the abolition of the extraterritoriality

treaty, and the European Powers refused to consent unless we imitated them in our legal, political, and social institutions. We had to yield to this, and imitate them. We had to imitate everything — Napoleonic Code, German Code, and Belgian Code. All the governmental regulations, down to those of the collections of taxes, were copied after European models. Japan was simply in the era of imitation.

It was in the midst of this era of imitation that I entered the service of the Government, and I worked side by side with my colleagues who had graduated from French and German universities.

As you all know, the compilations of French and German books are very handy. If our chief asked us to look up the organization of the judicial system, the French and German scholars translated from these handy books; and, in a few hours, they had everything in a nutshell. When a similar duty was assigned to me, I was at a loss. I had learned at Harvard Law School about equity, evidence, criminal law, and real property; but all this was of no use to me then. I went to my "Coke on Littleton" and my "Washburn on Real Property," but I could not make any use of them. I felt so disappointed that I wished I had not gone to America, but to France or Germany instead, and had come home with this knowledge of everything in a nutshell, with a book on every subject, — in fact, with a small encyclopædia upon all subjects, in which you have, after a few hours' reading, everything in perfect shape. I must confess that neither the common law of England, nor Anglo-American laws, assisted me in the least.

But I was not left long in this condition of disap-

pointment ; extraterritoriality was soon abolished, and with that ended the era of imitation. No longer French or German books were needed when the era of adaptation had dawned over New Japan! Our first Parliament was then opened, and our diplomatic negotiations were conducted on a footing of equality. Then there came up subjects to be handled according to American methods. Then I discovered for the first time the real strength and power of the education of Harvard Law School.

When some difficult question between the different departments of Government, or some difficult question between Japanese subjects and foreigners, came before the Cabinet, with its great pile of papers and documents, the mere sight of which was appalling, — then the legal training at Harvard Law School came to my rescue, and brought me not rescue merely, but power. I examined the question by reading paper after paper, just as Ex-Dean Langdell taught me to handle the case-system, and when I had gone through them all, I knew just where the gist of the case lay, I knew the weakness and the strength of each party, because I had been trained at Harvard Law School to handle just such cases as these. I was never afraid to encounter any question of Government affairs, however important or difficult, and when I had finished reading the case, it was so clear in my mind that I could instantly write out my opinion just as I used to write the head-notes of a case at the Law School.

Then I was glad that I did not go to France or Germany, but came to America, to have my legal training at Cambridge.

Thus you see that in our era of imitation, the Har-

vard Law School education was of no use, but when we came to the era of adaptation, that is, of discriminating between good and bad in foreign institutions, and adapting the best to our own institutions, then the training of Harvard Law School was the most useful that one could have.

This is my own confession; and not mine only. Baron Komura, our Foreign Minister, and Mr. Kurino, our late Minister at St. Petersburg — both your fellow alumni of Harvard Law School — would say the same, if they were here to-day. These two men, just before the outbreak of the present war with Russia, had to deal with the most difficult and delicate questions, but so skilful was their action that not a mistake was made by them in any point of international law, or any violation, however slight, of its customs and etiquette; and our Government Report of the correspondence between our representative at St. Petersburg and our Foreign Minister in Tokio, beginning July 28, 1903, and extending to February 6, 1904, is really a living monument of the case-system of Harvard Law School, applied to our international affairs.

Dean Ames said, a few minutes ago, that we have, as yet, very little in the way of authoritative books coming from the School, because the Faculty have been busy preparing the case-books, but that Report of our Government, I might say, is an authoritative book, which can be claimed as the outcome of Harvard Law School.

I might say much more in regard to what Harvard Law School training has done for me in my political career, but I will not take up too much of your time.

But, gentlemen, you have offered me to-day a rare opportunity to thank the President of Harvard University and the Faculty of Harvard Law School, and to testify that Japan has attained its present position largely through the influence of Harvard University. The education of Harvard Law School makes not only good judges and lawyers, but also financiers and business men, diplomats and statesmen. The thorough training obtained here will be beneficial and useful for the Japanese student, whatever profession or whatever career he may choose, in time to come, just as to-day, in our present struggle against Russia, Japan has shown to the whole world the true value and strength of Harvard Law School education.

The President: The harbor lines of the State of Maine, apart from recent acquisitions, compare favorably with those of the rest of the country put together, and you all know that its inhabitants are addicted to the sea. It was most appropriate that at the time the thunder of our guns opened the eyes of the nations to the existence of our sea power, a son of Maine should be at the head of the department of the navy, winning in its administration more renown even than he had achieved as a representative in Congress or Governor of the good old Commonwealth of Massachusetts.

I ought to add confidentially, and in a whisper, that as Chief Justice Marshall was celebrated at Richmond for his great skill in playing quoits, our friend Governor Long has a reputation at Buckfield as being the best maker of custard pie from Kittery Point to Quoddy Head. I call on Governor Long to gratify us with some remarks.

HON. JOHN D. LONG.

It is characteristically disinterested in the Chief Justice to pay a compliment to the State of Maine as the mother of distinguished men, because — although he did not mean to refer to that fact — he is one of its foremost sons. I do not know what he means by his reference to custard pie, but if I had one at this moment, I would throw it at his head, although it is well covered already — with glory.

I question whether I am entitled to sit at this table of the heavyweights. I have had little legal education or career to speak of. It is true I sat on the benches of the Harvard Law School, sitting there with Professor Jerry Smith, who sits at my side here. I designate what Smith, because the name is not unfamiliar. I remember that at that time he wore a black Kossuth hat, which perhaps he wears to this day. I remember no other distinction which he at that time had attained, much as he has since attained. I presume he got something at the school, though very likely it was born in him, for the lawyer, like the poet, — and like any other fellow in his line, — is really born and not made.

As has been suggested, times change, and the Law School as well as all the rest of us change with them. In those days there were three professors, — Joel Parker, whose lectures were as inspiring as a Puritan sermon on the metaphysics of the freedom of the will; Emory Washburn, who poured out the chapters of his great big book on Real Property in a torrent over his lips like a brook over rocks; and Theophilus Parsons, the junior of that great name, who wrote legal treatises almost as fast as his great contemporary, Mrs.

E. D. E. N. Southworth, issued her mild novels. Still, it was all good — for the price. But how different from the instruction to-day! The fault, if any, was doubtless in the recipients, not in the givers. I fear — since confession is the order of the day — that the Parliament, as we used to call that great debating society which met Friday evenings in Dane Hall, was more attractive than the moot court. At any rate, the only distinction which I attained was in the former body in getting over a perfectly sound but obstructive ruling of the chair by appealing from it, — an appeal which the ingenuous and promising majority of that body overwhelmingly sustained, and thus showed their fitness for the future statesmanship which has made this country the biggest on the face of God's round globe, and its glory the brightest on the pages of the history of this world or of any other in the illimitable universe. You see, gentlemen, I have just returned from a National Convention. But, brother Olney, just wait until you hear from the one next week at St. Louis.

However, after that I spent a year in the office of the leader of the Suffolk Bar, and was deemed by everybody very fortunate in that opportunity. I sat in the ante-room with the office boy, who gave me lessons in evidence by the smut on his face and hands, from which I drew the irresistible inference that he was in a conspiracy with the coal hod for the concealment of his lunch. My training there consisted of one question of law asked me by that great lawyer during the year, which I was too frightened to answer correctly, had that been possible, as it probably was not under any circumstances; also of copying one legal document, my success in which was in copying its

illegibility so faithfully that I never was asked to copy another; and of observing the frequency and depth of draught with which the junior member of the firm resorted to the big pitcher of ice water.

Thus splendidly equipped, I entered on the practice of the law in my native State of Maine, from which the Chief Justice and myself escaped at the earliest possible moment, and then started upon the practice of law in the mother State of Massachusetts, on which I have imposed myself ever since.

I might dwell upon this intensely interesting personal narrative, but I shall not do so. I have done it only because it leads me to remark that, like most other old saws, the saying that "The law is a jealous mistress" is a blooming fallacy. She is the jolliest, the best natured, the most indulgent old girl in the world. She will give you the latch-key and let you stay out as late as you please. She has any number of apron strings of any length, and lets you hold on to her by any of them that you please, provided you play fair. For she will cut you off in early bloom if you are not honest and square. But given that, she will let you become a pretty good jury lawyer if you know — or, what is more frequent, appear to know — the routine axioms of the court-room. Or she will let you become the most profoundly learned of lawyers and never have a client. Or you may combine, as the best lawyers do, ample resources of legal knowledge, conduct of business, wisdom in advice, power of convincing statement. You may devote a whole lifetime to the examination of titles, to the administration of trusts, — where some honest coins always stick to the bottom of the pot, — to the discharge of the judicial

function, or to the direction of corporate interests, and though you have never tried a case in court, or sassed the fellow on the other side, she will reward you with a sugar plum. The fact is, that she honors the narrow range if made the most of, but she has a kindly heart after all for the wanderers, for whom I may speak, who have strayed over the whole pasture.

For she recognizes, as has been intimated here, that she holds the keys that open upon the avenues of public life, of political service, of constructive legislation, and of social work. She knows that she stands for the foundations of government and society. She recognizes, Sir, that your predecessor, John Marshall, to whom you have referred, was historically the greatest American judge because he not only had serveal in Congress, but had been a part of the political machinery of that formative time, and had brought from those sources to the judicial settlement of our constitutional foundations consummate qualifications for the work. He inspired the letter of the Federal Constitution with the developing and liberal spirit which gave it life that it did not have before, and which gave to the United States union, force, and especially adaptability to the needs of the coming time and of its future development.

It is this outreach, this comprehending of future as well as present relations, this training, not of the book, but of affairs, which she requires, as you, President Eliot, have suggested, in the men who make the law, the men who interpret the law, and the men who execute the law. They are all better for her schooling.

The law, — why it is the very foundation. The prophets are linked with it, but the law is first: it is the

source, the spring; and the prophets are its exponents, its voices crying in the wilderness of every time of need. It is the rock of ages, of safety and salvation; the house that is not built thereon will not stand, but will fall in the first storm that beats upon it. Are there riot and violence? — the law! Is there in Colorado invasion of the rights of employer on the one hand and employee on the other? — the law for both alike! Is there disfranchisement of the voter? — the law! Are there wild theories threatening society? — the law! Is there — if I may return to the subject of the morning — is there a question to-day of our duty to the millions of dusky islanders of the Orient, with their variety of classes from the cultivated scholar and publicist down through the traders and mechanics and the boys and girls whose bright faces you may see to-day at the World's Fair at St. Louis, and who have been taught the English language by American teachers in native schools like our own, — down through them to the half savage at the same Fair, who, naked except for his breech-cloth, points with pride to the tattooing on his breast which shows that he has cut off a human head in a fight, and who, though perhaps his is not at present exactly the hand to hold the reins of government, feels as much pride in that bloody distinction as one of our heroes who emulates the heroism of his ancestors on the battlefield, — all these classes, eager, subtle, sensitive, suspicious, ready in their native politeness, and I suspect with a natural finesse, to answer your inquiry about the future of their country in any way that they think will suit your preference in quoting them, but all on the watch, all remembering the Spaniard's oppression, all as yet unable fully to compre-

hend that you do not have something of the same ulterior purpose, — all these classes absolutely requiring that time shall do its work, and that perhaps the present generation shall pass away, and that another, educated from early youth on American lines, shall through confidence and experience secure a safe standing-ground for observation and for final judgment, — all these now a smouldering fire to which outbreak and revolution are incident by the very nature of their racial makeup and tradition; — is this all a burning question? The answer is, the law! — the law first! — the law as it is to us, — the law with its constitutional foundations, equal rights, security of life, liberty, and the pursuit of happiness, participation in public affairs, education in the common school, training in labor, a title in land, a home, gradual and developing preparation for self-government, — in short, our American system of law and all its outgrowth, all of which must have time, and must have the patient and the helpful coöperation of all our people, for its establishment.

That, and that alone, is the present duty which we cannot escape, which is upon us whether we would have it or not. That is the duty, and it is vital. It is vital to the attainment even of the goal which we all, every one of us, — whatever our differences of opinion in other respects, — desire for these our brothers in brown. And it is infinitely more vital than any vague and unsettling platitudes about their nominal political status in an indefinite future which neither they nor we can now forecast. Now is the accepted time. Not only sufficient to the day is the work thereof, but the day should be devoted exclusively to this present work

and we should not be diverted from it, — the work of extending to them this system of law in the sense in which I have used the word. And I think I may add of extending it not only abroad, but of extending it at home, where we need it quite as much, and perhaps more.

Mr. Chairman, for the devotion of the Harvard Law School to the education of the bright and powerful youth who have gone out from it on this quest of laying and strengthening everywhere the foundations of law, and who, standing for the law, will be, as has been suggested, the best bulwark of the republic, I return here with delight to lay my tribute upon the altar of the School. And also to join in this cordial welcome to the orator of the day who, having distinguished himself in the high judicial service of his country, has more recently in the Philippines illustriously, wisely, conscientiously, and with statesmanlike comprehension, carried out the prayerful and solemn injunctions, some of which he read this morning, of President McKinley, and has also there set up the standard and given the personal example of what it is in the best sense of the word to be an American lawyer, statesman, and citizen.

The President: It is not a far cry from Massachusetts to New Jersey, and the judicial tribunals of both States may alike be relied on for even-handed and certain justice.

I refer to the eminent judiciary of New Jersey because we have with us a graduate of the School of 1881, Mr. Justice Swayze, a member of the Supreme Court of that State, whom I now beg leave to present to you.

JUSTICE FRANCIS J. SWAYZE.

Mr. Chief Justice and Brethren of the Harvard Law School Association: During the early part of the afternoon, it almost seemed to me, as I looked along the row here, that this was a Yale celebration. It is certainly very gratifying to find the Chief Justice of the United States as the honored President of the Harvard Law School Association. It is very gratifying to a graduate of Harvard, and an early member of this Association, to hear the tribute paid by the Secretary of War this morning — in what seemed to me the most admirable part of that admirable speech — to the merits of the Harvard Law School, and this afternoon the Chief Justice of the Commonwealth of Massachusetts has joined the Chief Justice of the United States and the Secretary of War in freely acknowledging the preëminence of the Harvard Law School in terms which our modesty would forbid us to use of ourselves.

I think I might almost say: —

> "Thebes did their green, unknowing youth engage,
> Each chooses Athens in his riper age."

I am sure you cannot — those of you upon the floor, perhaps some of us upon the platform can — understand the embarrassment which a judge must necessarily feel. He is called upon at every turn to give a reason for his opinion upon compulsion, and Falstaff told us long ago how very difficult and embarrassing that is. But it is far more embarrassing for the junior justice to express his opinion upon a subject about which he probably knows nothing, in the presence of

men from whom he has been accustomed to take his law.

I am reminded of a friend of mine who was appointed to the Federal bench in New Jersey some years ago; he confessed frankly that he knew nothing about the subject of patents with which he was likely to be forced to deal, and he told me he picked out for his first case one which seemed to involve a patent harness, as he was familiar with horses. He took the papers home, and was surprised to find that they related to the harness for a Jacquard loom.

On an occasion like this, the temptation is certainly very strong to deal with those burning political questions of the day which lie just outside of the realm of the law, but are connected with it by so many ties. But I recollect that in Massachusetts, Chief Justice Holmes has ruled that "temptation is not invitation," and although perhaps we have not carried the doctrine in New Jersey to the same extent, I recognize here the jurisdiction of the Supreme Court of Massachusetts, and I shall therefore in what I have to say speak only of the subject to which your invitation naturally directs my attention. On all other subjects I think it is fair for me to say that you probably know more than I do; I think I know more about the constitution of the courts of the State of New Jersey than perhaps any of you, and it may interest you to know something of the constitution of the courts of that State, for I hope that it will fall to the lot of some of you some time to have occasion to assist our courts in dealing with those questions of corporation law, involving millions of dollars, which are now beginning to come before us. And the subject ought to be inter-

esting to you also for another reason, for you will see, as I describe the organization of our courts, that we have been able in that State to make a good use of what seems to be upon its face a bad system.

Our court of last resort is composed of the chancellor, the chief justice, the eight associate justices of the supreme court, and six judges specially appointed, none of whom need be lawyers, all of whom a few years ago were laymen, two of whom are laymen today. It has been wittily said of that court that it is "a little too large for a jury and not quite big enough for a right good town meeting." It has also been said, not so truthfully, I think by some disappointed litigant, that your appeal in New Jersey lies from the court that has just heard the case to the same court with six additional judges who know no law.

One of the curiosities of the court is that the chancellor sits only on the hearing of writs of error, and the appellate jurisdiction in equity is with the chief justice and the associate justices of the Supreme Court; so that while I cannot grant a writ of injunction, I am entirely competent, *ex officio* at any rate, to say whether the chancellor had a right to grant the writ or not.

You ought to be interested, I think, in some of the unpublished rules of the tribunal, and I violate no confidence when I read them to you. They are rules codified a few years ago by Judge Adams, one of our wittiest and ablest judges. They are intended for the government of the judges in conference principally, and are as follows: —

1. Not more than three judges shall speak at the same time.

2. Stop; look; listen.

3. Agree with your brethren, and if possible with yourself.

4. Declare no dissent in public that you have not first declared in conference — don't acquiesce at first and kick afterwards.

5. Never write a short opinion. The art is to express yourself so as to make it difficult, if not impossible, to prove that you are wrong, and at the same time leave yourself free to decide the next case in any way you please. These results cannot be secured by brevity.

6. It is usual, though not obligatory, to make the head-note shorter than the opinion.

7. When sure that you understand a case better than counsel, ask him for information.

8. If a judge is caught listening to counsel, he need not apologize.

9. When counsel interrupt you, be courteous.

10. Distrust first impressions; if your mind does not receive first impressions, ignore this rule.

11. When in doubt whether you sat in a case below, vote to affirm on the opinion.

12. When you know nothing about the case, state your reasons at length.

We have another curious feature in New Jersey. Our judges are appointed for terms of seven years at a time by the governor. On its face, I think a system like that does not promise good results. As a matter of practice, public sentiment and the opinion of the bar require that judges should be reappointed, and it is the almost invariable practice in that State to reappoint our judges, — a practice to which I suppose the

offices of chief justice and chancellor might be made exceptions in the case of a political change. So that we have had Chief Justice Beasley appointed for five consecutive terms, and die in office; we have had Chief Justice Depue appointed for five consecutive terms, three of them by governors not of his own political party, and finally appointed chief justice, and retiring at the end of thirty-five years' service only by his own voluntary act; we have had Justice Van Sickle six times appointed to the office of Justice of the Supreme Court, twice by governors not of his political party, and we have had more than one instance of judges appointed not merely by governors of an opposite political party, but by governors who for personal reasons would have preferred not to make the appointment.

That is the system which the good sense of the people of New Jersey has been able to develop out of unpromising conditions.

You in Massachusetts honor the names of Parsons and Shaw and Gray and others; we in New Jersey honor the names of Green and Beasley and Depue — and to the latter I pay the tribute due not only to a learned and accurate lawyer, but to a kind personal friend. We have developed a system of jurisprudence of our own, based largely upon the English decisions. With that jurisprudence we are satisfied, and the people trust us to an extent perhaps greater than in other States, to an extent greater sometimes than we desire, for they put upon us work of administration which properly belongs to others. That is done in New Jersey, as it is done elsewhere, because every one knows that when he goes before a judicial tri-

bunal, he goes before men who by their training and the habit of their minds are bound to hear both sides before they pronounce a decision, and to decide according to the right of the cause under the rules of law. And as these great questions come up, no matter what our different views may be as to the functions of government, no matter how we may differ as to the proper line which divides the powers of the national government from those of the state government, as long as judicial tribunals hear both sides and decide honestly, these questions will be properly dealt with.

I have no doubt that it will be done in New Jersey and done in Massachusetts and done in the Federal courts, and done in the future as well as it has been done in the past.

The President: You have in your presiding officer, gentlemen, one of the oldest surviving citizens of the City by the Lakes, and I am now about to call upon one of the youngest; for although he is now acquiring distinction in the City of New York, I think that a large share of his success is traceable to the fact that he originally came from the City of Chicago.

I call upon Mr. Rand.

WILLIAM RAND, JR., ESQ.

Mr. Chief Justice, Mr. President, and Brethren of the Harvard Law School: I esteem it a great privilege to be here to-day to join in doing honor to the distinguished legal and military magistrate who is our guest. I assure you, you can have no

idea, after passing some years in an atmosphere of strike, collision, explosion, and assassination, tempered by Jerome, how grateful are these academic shades. Yet there is something ominous in these Law School celebrations in finding how quickly you move up toward the band, and how these great classes that have latterly been graduated crowd you along toward the middle of the procession.

It seemed to me, as I journeyed hither, a question of some difficulty to know just where I was expected to come in on the speechmaking. Of course I knew I was as competent as any man at this table to tell the Secretary of War how many mistakes he had made in the Philippines, but I felt sure there was a disputatious member of the Board of Overseers who would gladly undertake that office, if he found it consistent with the courtesy due to a guest. Again, while sitting here, I felt it incumbent upon me, as well as upon the other speakers, to give some valuable suggestions to the learned judges present. But I am so constantly engaged in telling judges what they ought to do that I determined to forego my chance to-day, and to address what little I had to say not to my seniors, but to my juniors, and to impose on you at this late hour only the very smallest fragment of personal reminiscence.

I judge from what the ex-Secretary of the Navy has said, that my legal education in youth was better than his, and my expectations were correspondingly more ambitious. But it occurs to me, in retrospect of the years since graduation, whose activities have made them seem few, though they are really now growing to be many, how largely we are all creatures of circum-

stance, and how little we are able to shape our ends. I recall that when I had won my first case in the Superior Court of the Pow Wow Club, I cast longing eyes upon that bench which you, Mr. Chief Justice, so well adorn. At another time, having passed a successful examination in the law of partnership, I thought that the chair now held by the Dean of the School would be about my size. More frequently — for even then it was a commercial age — I dreamed of occupying palatial offices, pushing buttons that summoned liveried lackeys, and in leisure moments telling the directors of great corporations how they might safely get rich and escape the meshes of the law. But in all my imaginings, I never dreamed of being a public prosecutor. Yet it is only as a public prosecutor, and with a very short term of service at that, that I have any suggestions born of experience to make to my professional juniors.

I wish to make a plea, a brief one, for a much neglected and despised branch of the law, that is, the criminal law. I make it from the point of view of a celebrated lawyer of New York, who, when I went down there as a candidate for bread and butter and any other good things that might come in my way, gave me the cheerful suggestion that no lawyer was of any use anyway until he was forty years old, and that he had better put in his time up to that age in getting experience. As an experience, I think you will find that the practice of criminal law has great value. In the first place, there is opportunity for real debate far greater than in the civil courts. In a criminal trial there is a real bone to be contended for, and all questions are hewed close to the line. It is, one

may say, the surgery of the law. A man will make a harder fight for his liberty than for his money. And a series of such fights cannot fail, I think, to give a lawyer an equipment which tends to make him more formidable to an adversary, whether his future career is to be in litigation or in negotiation.

Moreover, on the strictly legal side, as must be well known to those of you here who are judges, most questions of constitutional law arise in criminal practice. It is, I suppose, — at all events I know it was in my day, — the ambition of every law student to impress his views of constitutional law upon the Supreme Court of the United States. To be sure, the "Harvard Law Review" is a good medium for that purpose, but I take it that it is not so good as to appear there in person. That may happen to any lawyer in criminal practice at a very early stage. I regret to say that I have enjoyed no such good fortune, but associates in my office much younger than I have had that honor; and in two instances, to my certain knowledge, have by their learning and eloquence persuaded that august tribunal not to abandon the rule of *stare decisis*, and to affirm the dismissal of a writ of habeas corpus where there was no Federal question involved.

Besides, and contrary to popular belief, the life of the criminal lawyer need not be one of absolute poverty. I suggest the criminal rich as a field of labor that should not be altogether without profit, particularly since their numbers have been so largely increased by recent decision.

But, gentlemen, aside from every question of personal advantage, the thought came to me during the address of the President of the University, which, like

everything he says, was full of suggestion, that the saying that "Every man owes something to the profession in which he is bred" is especially applicable to those who have enjoyed the advantages of the Harvard Law School, and that we shall do well to remember that the law is not only a science but a calling, — a calling where responsibility is yoked to opportunity, and that if we faithfully apply the lessons we have learned in these halls, and profit by the examples of the great lawyers who have preceded us here, we shall be quite as solicitous for the one as for the other. And it is in view of these responsibilities which we are so often tempted to forget, that I venture to remind you that not of least concern to the communities which we serve is the protection of personal liberty and the faithful and fearless administration of public justice.

The President: In bringing these exercises to a conclusion, I shall regard it as a favor if Professor Blewett Lee, of the Law School of Northwestern University, and a leading lawyer of the West, will speak for a few moments at least.

BLEWETT LEE, ESQ.

Mr. President and Gentlemen: It is a great pleasure to me to be present with you on this occasion, and especially after hearing the words which have come from the distinguished jurist of New Jersey, who said in the course of his remarks that the people of Massachusetts respected Shaw and Parsons and Gray "and others." On the programme of this

occasion it stands written that speeches will be delivered by President Eliot and Dean Ames, Hon. Richard Olney, Hon. John D. Long, and so on, mentioning the names of all the previous speakers, and then it adds, "and others." I have the honor in this case of being the "others."

It is a happiness to me to put my feet upon the soil of Massachusetts, that hardy nursery of American seamen, whence all Secretaries of the Navy come. It has been a happiness to me also to hear Secretary Taft, our "Scipio Philippinus," returning with victorious eagles. I want to say to him that I have heard a great many Democrats say that whenever he is nominated, they don't care what it is for, they are going to vote for him anyhow. My friend from New York has spoken a few words on behalf of a neglected branch of the profession. I want to speak to you a word for a still more neglected branch of legal learning, and one that so far as I know has not a dollar in it for anybody in this country.

When I was a student here, Dean Langdell and President Eliot used to say, successively in the order named, "The law is a science, the materials of which are found in printed books." Now I want to push that proposition one step further: "The law is a science, therefore its conclusions have universal validity." The investigations of a scientific man are of value for the whole world, and his discoveries are valid everywhere; therefore the researches of a scientific lawyer have a value for the whole world, and his conclusions are valid everywhere. There is a mine of learning in the theory and the history of our own law which is to be found in foreign sources. I claim that here is

the most fruitful field of legal knowledge unexplored to-day. Either law is not a science, or we are cutting ourselves off as a profession from the intellectual life of the rest of the world. The problems of law are problems of human conduct, and human nature is the same throughout the civilized world. We are grateful for the work which Dean Ames, Professor Williston, Professor Beale, Dean Wigmore, and others have done; they have led the way, they have pointed out and brought to us in some measure the results of foreign learning. But what we want, in the words of a platform orator, is "a more and better policy" in this direction. That which has been the exceptional practice must become the rule before the advance of legal learning keeps pace with that of the other sciences.

He who does not explore the best foreign authorities upon the subject which he is treating, to that extent, at least, is not a scientific man, for this is what all other scientific men do. I think our law is the richer to-day because Mr. Justice Holmes has occasionally brought to the solution of his problems a wider learning than the law reports alone could give him. And when we think of the use which Mansfield and Story and Kent made of foreign sources, the fear is not that their example will be followed, but that it will be lost.

Our foreign brethren can teach us a great deal, at least, in matters of principle, and there are lawyers all over this country who are suffering from a lack of principle.

At this stage of the day I am reminded of the somewhat apocryphal story told by a Confederate sol-

dier, that on one occasion during the Civil War, he took advantage of the long range of his rifle and had succeeded in killing sixty Federal soldiers in quick succession. "At this point," he said, "General Robert E. Lee came up and laid his hand on my shoulder, and said, 'Stop; this is not war, this is murder.'" So I will stop right here.

CONSTITUTION

OF THE

HARVARD LAW SCHOOL ASSOCIATION

CONSTITUTION OF THE HARVARD LAW SCHOOL ASSOCIATION

ARTICLE I

The name of this Association shall be the "HARVARD LAW SCHOOL ASSOCIATION."

ARTICLE II

The objects of this Association shall be to advance the cause of legal education, to promote the interests and increase the usefulness of the Harvard Law School, and to promote mutual acquaintance and good-fellowship among all members of the Association.

ARTICLE III

SECTION 1. All graduates, former members of the Harvard Law School, and all present members of the Harvard Law School who have been such for at least one academic year, exclusive of Commencement Week, may become members of this Association.

SECTION 2. Every member shall pay an annual due of one dollar; but any member may become a life member by the payment of ten dollars in one payment, after which he shall be relieved from the payment of all dues.

SECTION 3. Honorary members may be elected by this Association on nomination by the Council.

ARTICLE IV

The officers of the Association shall be a President, not less than ten or more than forty Vice-Presidents, a Secretary, a Treasurer, and a Council of fifteen members.

The President, Secretary, and Treasurer shall be *ex-officio* members of the Council.

ARTICLE V

SECTION 1. The President, Vice-Presidents, Secretary, and Treasurer shall be elected for the term of one year.

SECTION 2. The members of the Council not members *ex officio* shall be elected in classes as follows: at the first meeting of the Association three members of the Council shall be elected for the term of four years, three members for the term of three years, three members for the term of two years, and three members for the term of one year; and thereafter, at the annual meeting of the Association in each year, three members shall be elected for the full term of four years to fill the places of those whose term of office shall then have expired.

SECTION 3. Vacancies occurring in any of the four classes of the Council before the expiration of their respective terms of office shall be filled at the annual meeting next following the occurrence of such vacancies.

SECTION 4. All officers of the Association shall hold their respective offices during the regular term thereof, and until their successors shall be elected and qualified.

ARTICLE VI

The annual meeting of the Association shall be held at Cambridge, Massachusetts, on the Tuesday preceding the annual Commencement of Harvard College; provided, however, that the Council shall have the power to appoint in any year a different time and place for the annual meeting, if deemed expedient.

ARTICLE VII

The President or the Council shall have the power to call a special meeting of the Association at any time; provided that at least two weeks' previous notice in writing be given to all members of the Association.

ARTICLE VIII

SECTION 1. The executive power of the Association shall be vested in the Council, subject to the control and direction of the Association.

SECTION 2. The Council shall have the power to elect from its own members an Executive Committee of not less than three

members, to whom may be delegated such powers as the Council shall deem expedient.

Section 3. The Council shall elect every year from its own members a "Committee on the Harvard Law School," and may elect such other committees from its own members or the Association at large as it shall from time to time deem expedient in carrying out the objects of the Association.

Section 4. The Council shall have the power to appoint from time to time one or more Corresponding Secretaries in the different cities or towns of the United States and the Dominion of Canada. It shall be the duty and office of such Corresponding Secretaries to promote in their respective localities the objects and interests of the Association.

Section 5. The Council shall have the power to fix the number of members of the Association necessary to constitute a quorum for the transaction of any and all business save that of amending the Constitution, and to fix also the number of their own members necessary to constitute a quorum of the Council.

ARTICLE IX

The Secretary, Treasurer, the Council, and the Committee on the Harvard Law School shall make and submit to the Association, at its annual meeting in each year, reports in writing of their respective doings for the preceding year.

ARTICLE X

This Constitution may be amended by a majority vote of all the members of the Association present at the annual meeting, or at any special meeting called for that purpose.

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